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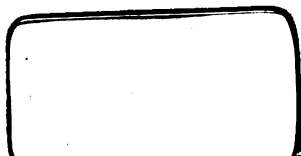
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INSECURITY
OF
BRITISH PROPERTY IN PERU.

IMPRISONMENT OF A BRITISH SUBJECT.

CONTEMPT OF BRITISH AUTHORITY.

**BAD FAITH AND FRAUD IN THE ADMINISTRATION OF
THE LAW.**

**PERSECUTION ENDURED IN THE ATTEMPT TO OBTAIN
JUSTICE.**

AN APPEAL
TO THE
REPRESENTATIVES OF THE BRITISH NATION
BY
HENRY DE WOLFE CARVELL.

SECOND EDITION.

LONDON:
CHAPMAN AND HALL, 193, PICCADILLY.
1863.

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AUG 19 1942

THE "TIMES," OF AUGUST 5, 1862.

"OUTRAGES IN PERU.

"Captain JERVIS asked the Under-Secretary of State for Foreign Affairs whether any steps had been taken to obtain from the Government of Peru satisfaction for the outrages committed against Captain Melville White and Captain Carvell.

"Mr. LAYARD said the treatment by the Peruvian Government of British subjects had been such as to call forth the most grave remonstrance on the part of her Majesty's Government. The two cases referred to by the hon. and gallant member were only examples of the unjustifiable proceedings which the Peruvian Government had taken with respect to Englishmen in Peru. Captain White had been arrested, thrown into prison, treated in the most barbarous manner, refused a statement of the charges against him, and suddenly sent out of the country. He was now preparing a statement of his case, which as soon as it was received at the Foreign Office would be acted upon by the Government and redress demanded for Captain White. Captain Carvell had had the misfortune to fall into the jaws of what must in courtesy be called a court of justice. Until the legal proceedings were exhausted, her Majesty's Government could not interfere: but the case had been referred to the law officers of the Crown, and further papers were expected from Peru. When the Government were in a position to act they would endeavour to obtain justice for Captain Carvell. Both these cases were most serious, and the House might rest assured that her Majesty's Government would insist on full reparation. (Hear, hear.)"

TO
THE BRITISH NATION,
THROUGH ITS REPRESENTATIVES
THE HOUSES OF LORDS AND COMMONS IN PARLIAMENT
ASSEMBLED.

AWARE of the value of time to those whose attention I now respectfully claim, I have condensed the statement of my wrongs into the narrowest possible compass. The narrative is precise and unvarnished.

I am confident that I shall not have appealed in vain to the constituted guardians of the honour of the British nation and the interests of Englishmen. My petition is for justice, which has been shamefully violated.

H. DE WOLFE CARVELL.

119, Westbourne-terrace, Hyde Park, London.



INTRODUCTION.

I COME forward to show that there is a case of grievous injustice—that all the temperate measures prescribed by the most eminent legal advisers have been resorted to in vain—that courts of judicature have violated the laws of two countries—that personages of exalted rank, high Government authorities, have, some from culpable indifference, others from interested motives, and others again from timidity, refused to render that even-handed justice due to all men in countries laying claim to civilisation, or thrown their weight in the scale to further iniquity and oppress the innocent.

The proofs I adduce are clear and irrefragable; they constitute a chain of evidence of striking and unbroken continuity. In all the legal proceedings that have taken place, the case has never been met on its merits, the evidence never been impugned; technical objections have alone been resorted to in pursuance of the too obvious design to obstruct the course of justice.

Though the corroborative proofs and explanatory incidents connected with my case require to be given at length, the facts themselves are simple enough, and may be embodied in a few words. An Englishman empowered by the laws of his own country to execute in a foreign land a sacred mission, and acting in all things in accordance with the laws of

that land, is plundered by individuals, deceived by the Government, denied justice by the tribunals, and sentenced to imprisonment in a dungeon destined to prove his tomb.

That wrongs such as these should entitle him to the protection of his own Government, to the satisfaction and redress which no civilised Government fails to demand when the rights of its subjects are infringed, their liberties attacked, their property spoiled, and their lives jeopardised, would seem the natural conclusion. Yet, though during eighteen weary months, at every fresh injustice, at every new outrage, I have appealed to the Home Government, thus far I have done so in vain. The reasons for this seeming neglect of the interests of a British subject must be sought in the apathy of its representatives abroad, and in the unblushing misrepresentations of the Peruvian Government. The narrative I now present of the succession of iniquities practised on one side, and of the tame policy with which they were looked upon on the other, will convince the reader that the long-sufferance of the Home Government in so flagrant a case of denial of justice can be attributed to two causes only—viz. the inefficient manner in which the case has been presented, and the facility with which the *ex parte* statements—statements totally unsupported by proofs, and contradicted on all points by the documentary evidence I adduce—have been accepted. Not satisfied with a denegation of law and justice which is without precedent in Europe, the Executive and Judicial authorities in Lima, through the instrumentality of the Peruvian Minister in London, have actually changed the respective positions of the parties in this strange case, charging me with seeking by subterfuges and evasions to avoid the decision of the suit, and thus occasioning the very delay, and the spirit-crushing, heart-sickening vexations of every description I have endured!

Had I succumbed, England would perhaps have taken signal vengeance on my murderers. That I have survived to relate my wrongs seems almost taken as a proof of their

insignificance! But even were the result of my protracted sufferings other than it unfortunately is, it could not affect the merits of the case. Whether my life was sacrificed, or merely shortened—my health injured for ever, or only for a time—can neither strengthen or weaken my claim. The question is one of denial of justice, not one of vengeance.

Only those who have a knowledge of the unscrupulous duplicity and low cunning of Peruvian officials can form an approximate idea of the value of a despatch emanating from them to a Foreign Government in vindication of their evil practices, and my case affords no solitary instance of the readiness with which their falsehoods have been accepted. The following may be cited among many others :

Thomas Melville White, a British subject, was seized in Callao, there brutally handled, taken thence to Lima, and thrown into the ancient prison of the Inquisition, where he remained "incomunicado" for several days. By some stratagem, he contrived, however, to communicate his position to some one outside, and, although things of this kind were of such frequent occurrence that people had learned to regard them with apathetic indifference, the knowledge that a British subject was confined in that loathsome den created some indignation among his countrymen resident in Lima. On learning the rumours afloat, I resolved to ascertain the particulars. I went with a friend to the prison, but was refused admittance, the only reply to our inquiries being that they must be addressed to Judge Ponce. We left our cards, desiring they should be given to the Englishman confined within the walls. After innumerable difficulties we finally obtained, through the Peruvian Minister for Foreign Affairs, an order to see our countryman. When Judge Ponce found he could no longer keep the prisoner "incomunicado," *i.e.* in solitary confinement, he permitted his removal to a cell less filthy than the one in which he had first been placed, but even this was the most horrible it has ever been my lot to behold. Human life must be counted by hours in such a place.

In that cell another Englishman, James Edwards, was murdered; and there, too, was I doomed subsequently to be sent by Judge Gamboa. Yet in the face of the well-known fact, that White had been lodged for days in this loathsome den, the Peruvian Minister for Foreign Affairs, in a despatch to the British Minister rebutting the charge of ill-treatment of White, boldly asserted that, when first imprisoned, he was placed in a *large, airy apartment, and supplied with everything necessary to his comfort*. I can describe the cell and the prisoner's occupation on my being admitted to him.

A dungeon seven feet by nine, damp stone walls, a wet stone floor; not an article of furniture of any kind, save a rusty iron pan, alongside of which was Melville White on his knees, eating with his fingers the dirty-looking rice it contained. This pan was absolutely the only article in the cell. White was haggard, wan, and labouring under an excitement, from which he was relieved at last by a passionate flood of tears.

The cell in which he had first been confined baffles description.

We at once went to purchase a bedstead, bedding, chairs, a table, a lamp, and such other articles of necessity as could render his situation more endurable.

Notwithstanding these facts, of which there is ample proof, the Peruvian Minister made the assertion above-mentioned.

Some four or five weeks after the arrest of White, a Peruvian official came to me one evening privately, and stated that information had that day been received from Tacna, that White was *there* on the day he was charged with firing at General Castilla, that the Government was annoyed and fearful of getting into trouble in consequence of the infamous manner in which an innocent man had been treated. On my remarking that he would of course be at once released and adequately compensated for the sufferings he had endured, my informant replied that the

Government, on the receipt of the intelligence proving the innocence of the accused, had resolved to convict him, *coûte que coûte*, as the safest way of getting out of the difficulty. Will it be credited in civilised England that this man was actually kept in prison nine months longer! All their efforts to convict him having proved futile, he was, notwithstanding the recognition of his innocence, condemned by a decree of the Peruvian Government, to perpetual banishment from the Peruvian territory. In Lima no one had ever questioned White's innocence!

The other victim I have mentioned, James Edwards, succumbed in seventy-two hours to the horrors of the cell in which White was first confined.

The circumstances attending the death of James Edwards were such as to arouse the indignation of all foreigners in Lima. These were communicated to the British Government, which wrote out to the Peruvian demanding to know the particulars. The reply, in the shape of a lengthy despatch, was exculpatory of the Peruvian authorities. They were entirely blameless, and great regret was expressed that they should be supposed otherwise, as their affectionate regard for foreigners generally, and for Englishmen in particular, was well known. Mr. Barton, the British Chargé, *ad interim*, having read over the despatch, threw it down in disgust, with the exclamation, "It is an infamous tissue of lies from beginning to end!" I remarked, "You will no doubt place this despatch in its proper light?" His reply was, "What for? To be snubbed?"

Mr. Barton often asserted that no man in Peru was better acquainted than himself with the "villanies" of the Peruvian authorities, yet when I implored him to write home a statement of the simple facts of my own case, and give the proofs of the extreme duplicity practised, his reply was, that to state these truths in his despatches might involve him in difficulties in Lima, and draw upon him a reprimand from his own Government, and that such was the frequent reward of a zealous

discharge of duty. What Mr. Barton did write with regard to Edwards I know not, but the answer from her Majesty's Government was to the effect that the explanations of the Peruvian Government were by no means satisfactory; there, however, I believe I am correct in saying that the matter ended.

Such was the feeling of terror inspired by the late administration of General Castilla, that people only spoke in whispers of an event that filled every heart with grief and indignation. I hold in my possession the pocket-book of the unfortunate man, placed in my hands by the British chaplain in Lima, on which he had scrawled in pencil, when dying, "*If I die this night, I am murdered, and no mercy.*"

In my own case the Peruvian authorities were themselves amazed at the impunity with which they were permitted, not only to violate the laws of nations and the individual rights of an Englishman, but to infringe the privileges of the Representative of a great Power. I had it from good authority that mail after mail was looked for anxiously, lest it should bring instructions to the British Chargé to call them to a strict account. With this fear before them, the authorities proceeded cautiously at first, waxing bolder as they encountered less opposition. Let me admit, however, that there were a few, even among the highest Peruvian officials, who secretly visited me, and expressed their disgust at the manner in which I was treated. I was told by a person holding high office under Government that General Castilla had that day, at the palace, said, addressing himself to some of the executive and judicial functionaries: "If all of you cannot crush one 'Gringo,'* you are not fit to be in office."

On the 13th of March, 1861, I was decreed to be in arrest within the limits of the city of Lima. I was kept thus until the 7th of August, when my numerous appeals to my own Government having failed to obtain its interference and the excessive forbearance of its Representative being well known,

* A term of reproach applied to Germans and Englishmen.

another step was advanced, my arrest being changed into an imprisonment, which it was fully expected would end the struggle on my part. From this impending death I took refuge, first under the French flag, and subsequently within the walls of the British Legation. There for over twelve months I was compelled to remain in such confinement as would have been equivalent, as far as regards air and exercise, to an imprisonment in Europe. All this time, while my health was sinking under an accumulation of annoyances and vexatious delays, I was incessantly but vainly imploring a decision from the Peruvian authorities. But I was *hors de combat*; that portion of the property that had not been stolen was, a part of it embargoed, and the other in the hands of my adversaries; and the dispensers of justice could afford to ignore me, and wait for time to solve the question, when I should have paid with my life the penalty of my obstinacy. In fact, they made no secret of their hopes, and openly speculated on how long it would take to wear me out. I would have been glad had they carried out their threat to demand me from the British Chargé. Any fate seemed preferable to the martyrdom I was enduring, and so bold a measure would probably have brought matters to a crisis, by compelling the intervention of my Government and justice from the Peruvian. This, however, was not the policy of the latter, and so long as I remained in the Legation no demand was made. But no sooner was I on board the "Topaze," and there was some chance, not of the restoration of my health, but of the prolongation of my life, and more especially of my returning to England and claiming in person the redress I could not hope for through her diplomatic agents abroad, *then* the tactics of my persecutors were changed, and the demand was made.

Delay has been from first to last in my case the invariable policy of the Peruvian Government. How terrible the consequences of this policy have been to me, how disastrous to the interests of the minors, there are ample proofs, yet in the face of those proofs a minister of state has not feared to come

forward and charge the chief sufferer by those delays with having wilfully occasioned them. In Senor Melgar we find that a minister of state may be so lost to all consciousness of the high duties his important position entails, as to throw the weight of his authority into the scales of justice, to lend his countenance to robbery, and persecute the robbed, and even descend so far as personally to coerce or bribe lawyers into abandoning the cause of their client. But in boldness and unscrupulousness, Senor Paz-Soldan has cast Senor Melgar into the shade. In a despatch dated January 24, 1863, in answer to one from the British Government, complaining of undue delay, and urging for a decision, Senor Paz-Soldan states that the delay has been caused by *the parties interested, and particularly by Henry de Wolfe Carvell, whom he accuses of having sought to retard a decision, and of having "practised subterfuges and evasions"* to effect this. He coolly adds that the solution of the question of the Will will be tardy, but that since the reception of the despatch from her Majesty's Government he has spoken to the authorities to expedite the case.

Senor Paz-Soldan is well aware that the question at issue can be decided in three days, but it suits his purpose to assert the contrary, and no man is better able to draw up a specious despatch and clothe the darkest deeds in the fairest colours. Having been a Minister of Foreign Affairs under previous administrations, he is better adapted than any of his countrymen to impose on the credulity of English statesmen. *Au fait* in all the diplomatic ruses, versed in the wily equivocations, the tortuous windings of the science of Machiavelli, no diplomatist can excel him in the precious art of embroiling the clearest points, and creating interminable difficulties in the simplest affairs. Clever and astute, bold and unscrupulous, his natural tact has been perfected by long experience; he displays consummate art in choosing opportunities, and never fails to improve them. His predecessors studied the ground, and acted with more or less daring as they interpreted the conduct of the English Government. Senor Paz-

Soldan now sees the coast clear, and strikes a decisive blow at once, completely reversing the position of the parties. The last move of the game played by the Peruvian Government, its tools and agents, is a fitting conclusion to the long tissue of misrepresentations and contradictions which I now lay before the public. After making concessions as vain as had been my opposition, I was kept a prisoner eighteen months by the decree of a judge, against whose usurped jurisdiction I had vainly appealed. That judge, ten days after my departure for England, with the avowed intention of relating my wrongs in person to my own Government, *declares himself without jurisdiction in the case, and confesses he had no authority to deal with it!*

To those unacquainted with the habitual perversion of justice, the open mockery of every principle of good faith, honour, and integrity, the cultivated duplicity of South American tribunals, and, above all, their innate hatred and jealousy of foreigners, the iniquitous proceedings detailed in the following pages would appear incredible were they not attested by unanswerable documentary evidence. Europeans, however, who have resided any length of time in those climes, so favoured by nature, so disgraced by man, will at once recognise an oft-told tale, and be tempted to echo the candid confession of the Peruvian functionary, that "*such things are of common occurrence in Peru.*"

Before I commence the recital of the long series of wrongs of which I have been the victim—wronges that have wounded my pride as a Briton, no less than they have touched me personally, and which have, in all probability, shortened my life by many years—let me call attention to the fact that I have hitherto abstained from any public demonstration of impatience or resentment. There are, however, limits to passive endurance, and the time has come when the insult shown to England in the violation of the rights of one of her sons, and the insolence with which the "*Droit des Gens,*" held sacred by the most powerful nations of the

earth, has been trampled upon by a petty South American State, should be brought to the full light of day. In making this appeal to the innate sense of justice, to the feelings of honour, honesty, and patriotism that dwell in English hearts, in thus pleading my own cause before the tribunal of Public Opinion, I defend the rights of every Englishman who seeks a foreign shore—I perform a public duty. An Englishman who tamely endures indignities and injustice from a foreign Government without invoking the protection of his own, is guilty of an unpardonable baseness; by thus acting he subscribes to the offence that has been committed, and helps to bring the power of his country into contempt. In the advocacy of my own rights a far more important principle is involved. I feel convinced that the result of cases like mine must be of vital importance to the commercial interests of such of my countrymen as are residents in the South American States, and whose capital and industry so largely conduce to the mercantile prosperity of England. If impunity be permitted in such an instance of foreign tyranny made public, they may hold themselves to be simply at the mercy of a set of men to whom law and truth are idle words save under pressure of the strong arm.

AN APPEAL FOR JUSTICE.

IN 1856, Michael Winder, an Englishman, and long a resident of Peru, left that country for England, accompanied by his wife and their children—a son and a daughter.

Mr. Winder had, for many years, resided and carried on business in Lima, and when he left that country, it was with the intention of spending the remainder of his days in his native land.

In June of 1857, in London, with the full consent and approbation of her parents, I married Miss Winder.

Mrs. Winder, a Peruvian lady, had never ceased to regret her native land. Neither the presence of her family, the new and ever-varied scenes which Europe presented, or its superior comforts and luxuries, could relieve the nostalgia that had seized her. Old habits and associations triumphing at last, she returned to Peru in 1858, Mr. Winder making her an ample allowance.

Mrs. Carvell died in January, 1860, and her father in December of the same year.

Mr. Winder had also two illegitimate sons, one of whom, Manuel Winder, resided in Lima, where he was employed as a clerk to his father up to the time of the latter's death.

Mr. Winder, at his decease, left real and personal property of very considerable value. The former consisted of

nine houses in Lima, and a large sugar estate in the country ; the latter of 613,000 dollars in bonds of the internal debt of Peru ; also of about 25,000*l.* sterling in England.

The executors appointed in England were Henry de Wolfe Carvell, Mr. George Hazlewood, and the son Michael Winder (then a minor), when he would be of age.

Mr. Hazlewood declining to act, and Michael Winder being a minor, it was left for me to take probate of the Will, and administer to the estate.

The Will provided that, within six weeks of the testator's death, I should embark for Peru with Michael Winder, of whom I was appointed guardian. Previous to leaving England, I consulted, through my solicitors, Messrs. Dawes and Sons, the then Attorney-General, Sir Richard Bethell, and Mr. Druce, of Lincoln's Inn, as to the course I was to pursue in the event of any difficulty arising, having been warned of the proverbial bad faith of South American authorities. During the conversation, Sir R. Bethell made the following remark, which I have since had frequent reason to call to mind : " If we have to do with civilised people, there can be no difficulty in a matter so clear ; if with Barbarians, her Majesty's Government will know how to treat them."

Having administered to the estate in England, I embarked for Peru, where I arrived on the 18th February following. I immediately called at the house of my late father-in-law, and there, for the first time, saw Manuel Winder. He desired I would allow him a few days to recover the shock occasioned by the news of his father's death before proceeding to business. In the mean time, he remarked, he would let me see that everything was all right, and directed the cashier to open the books, showing the condition of the house in Lima, what bonds were in the safe, &c. The account, agreeing on all points with the private ledger of the deceased, which I had brought with me, was perfectly satisfactory.

It should be here stated that the house in Lima, in accordance with Mr. Winder's instructions, had sent him monthly

and quarterly accounts, showing the receipts and disbursements up to the time of his death. The last account, dated 7th January, 1861, which arrived in London after our departure, showed the 613,000 dollars in bonds as existing, with the interest for the previous quarter, ending 31st December, 1861, credited in the account.

Of the 613,000 dollars in bonds, Mr. Winder had left 218,000 dollars deposited with Messrs. Graham, Rowe, and Co., of Lima, taking their receipt for the same. The remaining 395,500 dollars in bonds he left in his own commercial house, in charge of Manuel Winder, Senor Urmeneta, and Senor Holguin (his cashier), to whom he gave a power of attorney, authorising them to collect the interests accruing from his bonds, houses, and other property.

On the following day, Manuel asked me if I had the receipt Messrs. Graham, Rowe, and Co. had given to his father for the bonds deposited with them. On my replying in the affirmative, he requested to see it; during the conversation he continued to hold, and finally put it in his pocket. Supposing this to be done inadvertently, I felt some delicacy in asking for its return.

The next morning Manuel came to me, and stated he had concluded it would be desirable to collect all the property together so as to facilitate its division among the heirs and save law expenses. He had, therefore, applied to Messrs. Graham, Rowe, and Co. for the bonds in their hands. They refusing to hand them over, he wished me to accompany him to obtain their delivery, that he might place them with the others in the safe. I acceded to his request, and, in stating our errand to Mr. Pike (the partner in charge), explained that as Manuel wished to place all the property together, I had no objection to the delivery to him of that portion which was in Messrs. Graham, Rowe, and Co.'s charge. Mr. Pike replied, that being a junior partner, he would prefer handing the property over to the British Minister, accompanied by instructions directing its delivery to the

Executors on production of the Will, letters of administration, and receipt given by the house when the bonds were deposited. To this proposal Manuel demurred as being totally unnecessary. I gave it my approbation, remarking that I thought it a fair and legitimate proceeding. Mr. Pike refusing to entertain Manuel's objections, we retired.

When Mr. Winder left Peru, he directed that such sums as he might order to be remitted to England should be taken from the funds accruing from the deposit of interest, &c., in the hands of Messrs. Graham, Rowe, and Co. At his death his books showed a cash balance in their hands of over 60,000 dollars. The sum subsequently proved to be there was only 22,000 dollars, Manuel on pretence of remitting to England, having drawn and appropriated the difference.

The afternoon after the refusal of Mr. Pike, Manuel—failing in his attempt to obtain possession of the bonds—drew out a receipt for the 22,000 dollars, which he presented, with the intimation that I, Michael, and others having arrived, and the family needing the money for necessary expenses, he had been deputed to draw it. Messrs. Graham, Rowe, and Co. declined to accede to this request also.

On the succeeding day I called upon Messrs. Graham, Rowe, and Co., and Mr. Pike mentioned the second application made by Manuel Winder. He afterwards remarked: "As you are a stranger in the country I feel it my duty to caution you to be very careful how you proceed, and to place no confidence in anything that may be told you by Manuel Winder, whose reputation is bad."*

My suspicions being aroused, I took the first opportunity of requesting the return of the receipt of which Manuel had retained possession, and, desiring to satisfy myself respecting the property deposited in the safe, I required it to

* To the firmness of Mr. Pike, to the business-like view he took as to the disposition of the property in his hands, is due its preservation.

be opened. Manuel hesitated ; became confused ; and finally confessed that he had asked for the delay of a few days after my arrival, in consequence of having entrusted the bonds to the custody of a gentleman who had a stronger safe. The gentleman had been absent in Chili, but was expected to return that evening.

Michael Winder, the minor, on learning what had taken place at the office, and the deficiency of the cash account, informed me that Manuel, at whose house he had been staying since his arrival, was incessantly urging his joining with him (Manuel) against me. If Michael would assist they could get the property into their own hands, drive the Englishman out of the country, and divide it between them. He also stated that, on the preceding evening, he had accompanied Manuel to his lawyer, Dr. Cisneros, where he represented that I had arrived in the country as executor, was about to take possession of the property, and desired his advice as to the best means to keep me out of it, that the family in Lima might divide the inheritance among themselves. Dr. Cisneros had replied that he saw no way whatever of accomplishing the end proposed, as my position was so legitimate ; Manuel must necessarily render his accounts to me. Manuel then suggested that the books, &c., at the office might be burned. To this the Doctor strongly objected, as such a course would inevitably establish crime on his part.

My apprehensions now being confirmed, I requested that the safe might be opened and the bonds produced. Manuel produced the key, but refused to open the safe, or even allow me to enter the room where it was, alleging he had not yet seen the person entrusted with the bonds, but that everything would be found quite correct the next day.

I now determined to act upon the advice given me by Sir Richard Bethel previous to my leaving England—viz. :—In the event of my encountering difficulties, to apply to her Majesty's Chargé d'Affaires, the Honourable William Staf-

ford Jerningham. Proceeding, therefore, to Chorillos, nine miles from the capital, I had an interview with Mr. Jerningham, and related the circumstances to him. He informed me that, from his experience of the natives, whose dealings were too generally characterised by fraud and bad faith, he feared I had good cause for alarm, and agreed to meet and advise with me the next morning at eleven o'clock. He did so, and accompanied me to the Foreign Office. Senor Melgar, the Minister, being absent, we saw his Representative the "Official Mayor," Senor Ezeta, the next in official rank. Mr. Jerningham having stated the circumstances which had brought me to Peru, the tergiversations of Manuel Winder, his proposal to burn the books, and the probability that he would abscond with the property, Senor Ezeta agreed with us that prompt measures should be taken; adding, that he would give immediate orders that both Manuel Winder and the property should be secured. He invited Mr. Jerningham to send *an official* communication to the Foreign Office, ON RECEIPT OF WHICH THE AFFAIR WOULD BECOME EXCLUSIVELY A DIPLOMATIC ONE, AND BE ATTENDED TO AS SUCH BY THE PERUVIAN GOVERNMENT. In compliance with this suggestion, Mr. Jerningham at once addressed the following official despatch on the subject to the Foreign Office, which was delivered there at two o'clock on the same afternoon, 22nd February, 1861:

"Lima, February 22, 1861.

"The undersigned, her Britannic Majesty's Chargé d'Affaires and Consul-General, has the honour to enclose copy of a note which he has received from Captain de Wolfe Carvell, British subject, who has recently arrived in Lima with the *Will* of the late Mr. Michael Winder, British subject, who died in the last year, in London, and has, amongst other property, left a considerable amount in Peru.

"As Captain Carvell is one of the principal *executors* of this Will, and responsible to the Courts of Law in England for its *faithful* execution, he is placed under the necessity of having recourse to my aid, because he has heard that part of the estate in Peru is in *danger*. He says that there is in the possession of Manuel Winder (an illegitimate son of the late Mr. Winder above mentioned) the amount of 395,500 dollars in bonds of consolidation and manumission, together with ledger-books and

papers, all of which belong to the estate of the late Michael Winder, of No. 2, *Bayswater, London*, and which amount, as also ledger-books, papers, &c., belonging to the estate, are in immediate danger of being made away with, or destroyed, and therefore the undersigned, at the request of Captain Carvell, as executor, begs to request the Peruvian Government to take such efficacious measures as lie at their disposal to *secure* this above-mentioned amount of property from being made away with, by causing the Peruvian legal authority to embargo it directly without loss of time.

"The Will of Mr. Winder has been proved in Doctors' Commons, in London, and the Law Courts of Great Britain will insist upon its being carried out strictly to the letter: therefore, to save any ulterior difficulty, it is indispensable that the Government of Peru take active measures to prevent the danger to which the undersigned has alluded above.

"The undersigned has the honour to renew to his Excellency, &c. &c.
(Signed) "WM. STAFFORD JERNINGHAM."

On the succeeding day, finding that no steps had yet been taken, I went to the Foreign Office and stated my conviction that Manuel Winder would escape unless prompt measures were adopted. Senor Ezeta assured me that I NEED BE UNDER NO APPREHENSION AS TO THE SAFETY AND SECURITY OF THE PROPERTY, IT BEING NOW IN THE HANDS OF THE GOVERNMENT. THAT THE PERUVIAN GOVERNMENT HAD RECEIVED AN OFFICIAL LETTER ON THE SUBJECT FROM HER BRITANNIC MAJESTY'S REPRESENTATIVE (which he showed me), and reiterated the assertion that all was perfectly safe so far as the property was concerned, and that Manuel Winder COULD NOT POSSIBLY ESCAPE. On receiving this renewed guarantee from so high a quarter, I left, somewhat reassured. Shortly afterwards I met Manuel, who said he wished to see me at my hotel at two o'clock, and that after the interview he would consent to the opening of the safe. He came at the appointed hour, accompanied by Senor Urmeneta, Mr. Bady, an English merchant, and Mr. Seacombe, cashier of the house of Graham, Rowe, and Co. Michael Winder and John Michael Winder were also present. Manuel said he was sorry to hear that steps were being taken by the British Minister and the Foreign Office to get him into trouble, and acknowledged what he had hitherto denied—viz.: the having appropriated to his own

use the 40,000 dollars deficient in the cash account at Messrs. Graham, Rowe, and Co.'s. He also stated that the reason why he had hitherto refused to open the safe was, that he had appropriated some of the bonds to his own use, and could not replace them at that moment without great loss. If time were given him he would make everything good, and, in the mean time, pay a fair rate of interest—6 per cent. for the bonds, the Government rate, and 9 per cent. for the cash, the general rate in Lima for the latter being 12 per cent. He stated the deficiency was small, but that he was unable to say the exact amount, and produced two documents from Senor Urmeneta, one for 20,000 dollars and one for 30,000 dollars left with that gentleman as a deposit. These bonds Senor Urmeneta expressed his readiness to surrender whenever required. Manuel then wrote a legal document on stamped paper, offering to make good any deficiency within the space of four years. Having signed it, he requested that the other persons present, who were interested in the estate, would also affix their signatures. I refused to do anything of the kind, stating that, though it was very far from our intention to be harsh or oppressive, in a matter involving such large interests, we were under the necessity of requiring a clear and explicit statement of the position of the estate. We were willing to be lenient, and even to assist him, would he but deal frankly with us. I then proposed that the safe should be immediately opened and its contents examined. Manuel finally agreed to open the safe for the inspection of the gentlemen then with us, provided I were not present, to which I assented. They accordingly proceeded to the office, and, returning in the course of half an hour, stated that 5800 dollars in bonds—of which they had taken the numbers and amounts—were all that the safe contained. 5800 DOLLARS IN LIEU of 395,500 DOLLARS! On inquiring for Manuel, I was informed that he had parted from these gentlemen at the door. I have never seen him since.

I hastened to the Foreign Office ; it was closed, but finding one of the employés, I related to him what had occurred. He assured me that Manuel Winder would be arrested that evening, and reiterated the statement made by the head of the department, that I need be under no apprehension, as the affair had now become a Government one in consequence of Mr. Jerningham's intervention.

Manuel however, was not arrested, nor has he been to this day.

It afterwards appeared that the offer made of an arrangement was merely a *ruse* to gain time, and defeat any efforts made to arrest him. The production of Senor Urmeneta's acknowledgments, making it appear that that amount was safe, would, it was hoped, induce me to sign the document prepared by Manuel Winder, who on that very forenoon had made preparations for flight, and given a power of attorney, to represent him in all his affairs, to a friend and accomplice named Camacho.

On the morning of the following Monday I again called at the Foreign Office. Senor Ezeta was said to be ill, but an official informed me that steps had been taken to prevent Manuel Winder from leaving the country. Senor Melgar being in his bureau, the official communicated with him, and brought me word that THE MINISTER HAD, ON REFLECTION, CONCLUDED THAT HE WOULD NOT HAVE ANYTHING TO DO WITH THE AFFAIR.

Thus were the solemn and reiterated assurances of the Peruvian Government summarily withdrawn, and, after having been lured on from day to day with promises well calculated to throw me off my guard, I was suddenly left to my own resources to obtain redress ! What the chances of a Foreigner—of an Englishman above all—were worth in an attempt to compel restitution from a native, those who had thus deceived me well knew.

I was advised to obtain a warrant for the arrest of the delinquent. But though accompanied by a lawyer, a clerk of the

Foreign Office (who went as a friend), and two English residents, I could not obtain an order of arrest for his apprehension from any of the judicial authorities. Being informed that I had better apply to the "Intendente" (Head) of the Police, I did so, and was received by that functionary most rudely and ungraciously. When I communicated the facts and stated the urgent necessity for prompt measures, he listened with marked indifference, shrugged his shoulders, folded his arms, and replied that *he "could do nothing for me; he felt more inclined for his dinner than anything else at that moment."* On my remarking that it was to be regretted the robber could not be arrested, and that, under similar circumstances, the laws of all civilised countries provided for immediate arrest, he replied, "These occurrences are common here;" adding, "You are in Peru." After much persuasion, he promised to send a telegraphic message to Callao, to prevent the robber from embarking at that port; this promise was all I could obtain.

In the mean while, I congratulated myself that at least the sum of 50,000 dollars was safe, as I had Senor Urmeneta's written acknowledgments and verbal promise to hand it over to me when required. I therefore waited upon that gentleman, and asked for the bonds. He replied, I should have them the next day. I went to him on the following morning, when he again put me off, saying he had lent the bonds to Senor Amanategui, the editor of the journal *El Comercio*—that gentleman was ill—the bonds would be returned in a few days. At the expiration of the delay, I again waited upon him, when he informed me that Senor Amanategui had made some objections to giving up the bonds.

I directed my lawyer to take immediate proceedings for the recovery of the 50,000 dollars.

During the two or three following weeks I was busily

engaged, and being shortly afterwards placed under arrest, at the suit of Mrs. Winder, I was unable to follow up the proceedings for the recovery of the portion of the property in the hands of Senor Urmeneta. When I was at last able to attend to it, I found that he had been to my lawyer, and obtained from him a delay of three weeks. At the expiration of that time—during which nothing had been done—there was a new promise to pay, and another evasion. I was subsequently taken ill, in consequence of the annoyance and fatigue I had endured, and this matter was left in abeyance. An attempt being subsequently made to press the matter, Senor Urmeneta was not to be found.

At eleven o'clock on the evening of my interview with the Intendente of Police, I received a letter* from Camacho, the intimate friend of Manuel Winder, and his Representative. From this it plainly appeared that Manuel Winder was in the environs of the city, and that his friend was perfectly cognisant of his whereabouts.

On the 20th February, Mr. Pike (of the house of Graham, Rowe, and Co.) had deposited at the British Legation the chattel property left in the charge of his house by the late Mr. Winder. The box containing the property was delivered to Mr. Jerningham, with the following memorandum: "*Box containing documents, deposited by Graham, Rowe, and Co., of Lima, in the British Legation at this city, on the 20th February, 1861, belonging to the estate of the late Mr.*

* "*Lima, February 25, 1861, ten o'clock in the night.*

"SIR,—Mr. Manuel Winder, deeply affected in consequence of your father-in-law's last will, has fallen in bed with a violent sickness. He has retired himself to the *campagne*, a circumstance that has been ignored by his own family and friend. They have said in Lima that Mr. Winder has fled, which is not truth! In this moment I have just received his general attorney, or public instrument, with the object of arranging, if possible, the cases. I hasten myself to announce you as soon as possible this notice, in order from begging a conference with you to-morrow morning, in my office, Correo-street, No. 163. I don't go directly to speak to you because my delicate health does not permit me to go out in the evening from home. I avail myself from this occasion in order to offer to you my highest consideration.

(Signed)

"J. V. CAMACHO."

Michael Winder, to be held at the disposal of the Executors, on their proving their title to the same, and returning the receipt given by Graham, Rowe, and Co. for the within contents."

With great difficulty I succeeded in instituting a criminal suit, before Judge Carillo, against Manuel Winder, demanding his arrest as a thief, and the embargo of his property, also requiring that warrants for his arrest should be sent to all the sea-ports. In so doing, I acted upon the express advice of the Peruvian Executive, by whom I was told that orders had already been given to that effect. On my expressing my ignorance of the laws and forms of the Peruvian courts, it was further stated that the judge knew what to do, and that I was simply to sign any papers sent to me for that purpose, as the Peruvian Government had already given the necessary instructions, it having been completely a diplomatic matter since the receipt of Mr. Jerningham's letter of the 22nd February.

On the same day I wrote to the British Minister, informing him of the sudden change in the language held at the Foreign Office, the refusal of Senor Melgar to interfere, notwithstanding the official despatch of Mr. Jerningham, on the 22nd inst., and the solemn and reiterated pledges that had been given to him, as well as to myself, in the name of the Peruvian Government.

My application to the criminal judge having been granted, orders were issued on the 27th to apprehend Manuel Winder, and to summon Camacho. The latter appeared, and swore that he knew nothing more of Manuel Winder's movements than was set forth in a letter* he had received from him, and

*

"Estate of San Agustin, February 25, 1861.

"DEAR FRIEND,—The affairs of my late father have caused me so much vexation as nearly to drive me mad, so I have come out to this estate, in order to enjoy a little peace and quietness, after having consulted with various friends. I enclose you a power of attorney, so as you may defend me in the lawsuit which will be instituted against me, and in order that you may try and effect a compromise of this unfortunate business of the estate of my late father, on the following basis: A true and correct account of all I am respon-

in consequence of which he had sought an interview with me.

This Juan Vicente Camacho had at one time occupied a respectable position, but was now considered to be a very disreputable character. A clever writer, perfectly free from all scruples of delicacy or honour, he became the friend and confidential adviser of General Castilla,* and, in that capacity, commenced a series of personal and most scurrilous attacks upon me through the medium of the public press. He was almost immediately taken into the Foreign Office, ostensibly as an employé, but, in reality, for the purpose of writing me down. The specious and cunning despatches upon my affairs, sent to the British Government by the Peruvian authorities, were his productions, and, whenever his employers were at a loss for excuses, the fertile invention of this unprincipled genius was successfully appealed to. The bias of the public press may be accounted for from the undissembled hostility of the authorities, and the fact, as previously stated, that Senor Amunategui, proprietor of *El Comercio*, had in his possession 50,000 dollars of the stolen bonds.

The summonsing of Camacho was productive of no result, nor were any further proceedings taken against him as the accomplice of Manuel Winder. Before I left Lima this worthy pair had quarrelled. Manuel, having taken his power of attorney from Camacho, and given it to another person,

sible for ; my share in the estate to be taken in part payment ; and a term of four years to be granted me to pay the rest. Do all you can for my benefit, and for the benefit of the co-heirs, as I don't wish to harm them in the least ; and if, unfortunately, I cannot at once deliver to them all that is due to them, I will work incessantly until I can do so.

"I do not know where I shall go to on leaving this, which will probably be to-day. Take care of my poor family, and command your affectionate friend."

(Signed)

"MANUEL WINDER."

"Mr. John Vincent Camacho."

* The enmity of General Castilla to me was matter of public notoriety. He was wont to boast at evening-parties that he would make the Gringo regret ever having come to Peru, and thankful if ever he got out of it.

instituted a suit against his quondam friend, whom he accused of stealing from him over 200,000 dollars of the bonds previously stolen from me! This breach of the honour the adage attributes to thieves in their dealings with each other, did not injure Senor Camacho in the estimation of a grateful Government, accustomed to look with lenient eyes on such venial peccadillos. In return for his services, he was spoken of as a fitting Representative of the Peruvian Government, first to Washington, and afterwards to Costa Rica. But this was too much even for Peruvians, the feeling of indignation becoming so strong that the Government relinquished its project.*

Mr. Jerningham, whose intervention I had again solicited on the 26th inst., on the following day called at the Foreign Office and saw Senor Melgar, who, in answer to his statement of the strange difficulty I had experienced in obtaining assistance from the judicial authorities, assured him he would at once give orders to a judge to take the necessary steps in the affair. An order was accordingly passed to that effect, in consequence of which fresh decrees were issued for the apprehension of Manuel Winder.

Notwithstanding all these assurances to the British Minister

* Senor Camacho's knowledge of French was, like his knowledge of English, quite sufficient to enable him to make his meaning clear. In the following letter, which I received from him about three weeks after his first written communication, is expressed intense disgust of his friend Manuel Winder's conduct; yet he subsequently instituted a suit against me for libelling that friend by calling him a thief:

" *Lima, Mars 15, 1861.*

" **MONSIEUR,**—Je regrette bien de vous annoncer que je n'ai pu arriver à une heureuse issue dans les affaires dont nous nous avons entretenu hier chez vous.

" L'affaire est si dégoûtante, que je n'ai trouvé en moi la force de vous voir ce soir dans le rendezvous que vous avez eu l'obligeance de nous offrir.

" Croyez, monsieur, que malgré la fatalité qui m'a mis dans votre chemin, je profiterai volontiers l'occasion de vous prouver combien j'estime vos sentiments de gentilhomme.

" Agréez, monsieur, l'assurance de ma considération la plus distinguée.

" **J. V. CAMACHO.**

" **A Monsieur le Capitaine Carvell.**"

and to myself, all the orders and decrees issued, the formalities constantly gone through, and the numerous documents daily brought for my signature, and though Manuel Winder was well known to be in Lima, no real step was taken for his arrest. Orders for his apprehension were issued on the 28th of February, the 8th of March, and the 25th of April, but all with a like result.* The Intendente himself, Senor Baquero, vouchsafed an explanation of the, to me, incomprehensible blindness of his employes. He stated that he had received private instructions a day or two previously *not* to arrest the delinquent, and that this interference from high-quarters had been obtained through the influence of Manuel Winder's friends. (Vide my despatch to Mr. Jer-ningham of March 14th, 1861.)

In compliance with my petition to that effect, Judge Carillo, as criminal judge, had proceeded to make an inventory of the books and property left by Manuel Winder in the office. This proved to be but another scene in the comedy that was being acted, for the benefit of some persons, no doubt, but greatly to the detriment of those whose lawful interests were concerned. The judge entered the office, accompanied by two or three persons, and commenced making the inventory. He had not proceeded far, when—alleging that there was not sufficient time to complete it on that day—he took the ledgers and books from me, turned me out of the office, placed his seat on it, as also on the door of the safe, and retired, stating that he would return on some other day and finish the inventory; but that day is still to come, and, up to the present time, he has remained in possession of the 5800 dollars in the safe, the books, and other property. Thus, the first act of the judge appointed by the Peruvian Government to assist me in the criminal cause, resulted in his dispossessing me. I applied afterwards repeatedly for the keys, and to be put

* Vide Judicial Documents.

in possession of the books, documents, accounts, &c., belonging to the estate, which, together with the 5800 dollars in bonds, were thus illegally detained by Judge Carrillo. Among the documents was one representing a claim upon the estate "Ingenio de Huara" for the sum of 120,000 dollars in favour of the late Mr. Winder.

While I was thus making ineffectual attempts to execute the duties that had brought me to Peru, another, and as it afterwards proved a far more disastrous, phase of the affair was being developed, under circumstances unparalleled, perhaps, even in the annals of Peruvian justice—that justice so skilled in making wrong right and right wrong, in transforming the victim into the criminal, and the criminal into the victim. I was fated, from beginning to end of this wretched affair, to furnish an illustration of the truth of the French adage, "*Les battus payent l'amende.*"

Mrs. Winder, instigated by her lawyers, now spoke of annulling the will of her late husband, and of bringing his personal property under the laws of Peru, whereby she would be entitled to one half of the estate absolutely.

I will now relate the occurrences connected with the suit instituted by Mrs. Winder. A statement of the arbitrary and illegal proceedings of Judge Gamboa, the opposition and embarrassments I have had to encounter, the bad faith of the courts, and the open violation of the law by the judges, will sufficiently evidence the injustice meted out to me.

On my arrival in Lima, wishing that everything connected with the will I had come to execute, should be carried out in due form and order, I had applied to the house of Messrs. Graham, Rowe, and Co., to recommend me a lawyer; they named their own, Senor Téjeda, who was considered one of the most eminent in the country. Under his guidance (assisted by other lawyers whom he called in for consultation), when Judge Gamboa instituted unlawful proceedings, and the opposition to me had become formidable, I acted in

all things relative to the will up to the time of his resignation.

On the *25th February*, 1861, Judge Olivarez informed me that he had been named by the "Corte Superior" as the judge to carry out the provisions of the will of the late Mr. Winder, and was what is there called the "Juez Testamentaria." In accordance with his request, I that day placed in his hands the Probate of said will and letters of administration granted to me by her Majesty's Court of Probate, certified and with the seal of the Peruvian Legation in London attached.

On the same day Judge Olivarez issued a decree ordering the translation of the will and letters of administration, and delivered the same to the Government translators, Don Francisco Mata Linares and Don Santiago Tavara, informing me that as soon as these documents were translated he would take an inventory of the estate. The translation having been completed in a few days, I requested Judge Olivarez to proceed with the inventory. He replied that he would appoint an early day, of which I should receive formal notice. On the 9th March, finding that no day had as yet been appointed, I made a formal application to him to have it done. (Vide certified copy of legal documents under that date.)

In the mean while Mrs. Winder, had made a secret application to another judge—Paredes—to take the inventory of the estate. Her motive, as it subsequently appeared, was, not to have the inventory taken; but, on the contrary, to prevent my having it done, by endeavouring to establish a prior application on her part, and, by so doing, prevent Judge Olivarez from acting. Thus, between the two, and even three, judges appointed and objected to in turn, and repeatedly, the inventory was not taken, and Mrs. Winder gained her object.

Judge Paredes having sent a note to Judge Olivarez in-

forming him that he, Paredes, was the judge to conduct the inventory, Judge Olivarez issued an order on the 22nd March, referring the matter to the "Agente Fiscal"—Ampuero—and remitting him the documents.

On the 10th *April*, the "Agente Fiscal" returned the documents with his "dictamen," declaring that all questions connected with the will aforesaid must be submitted to *Judge Olivarez* as he was "Juez Testamentario." (Vide certified copy of Judicial Proceedings.) On the same day Judge Olivarez issued a decree in conformity with the exposition of the Fiscal declaring his competency and jurisdiction in the case, and further declared that the inventory should be proceeded with. Don José Selaya, public notary, was directed to attend for that purpose at seven o'clock on the morning of the 17th of *April*. (Vide judicial documents.)

Further opposition being offered, the judge did not carry out his order of the 17th of April, but again submitted the documents to the Fiscal on the 22nd May.

The Fiscal, by his "dictamen," dated 27th May, again declared the opposition unfounded, and that Judge Olivarez ought at once to carry out his decree of the 10th April.

Judge Olivarez, in a decree dated 28th May, once more ordered the inventory to be taken. This decree has remained a dead letter up to the present date.

On the application of Mrs. Winder, Judge Paredes decreed that inventories should be taken, first on the 7th of May, and again on the 17th of May, neither of which was carried out.

Finding that these delays exposed the estate to serious damage, by advice of counsel, I ceded the point that Judge Paredes should take the inventories, and, in an application dated 5th June, 1861, asked that it might be done at once.

Mrs. Winder now objected to the inventories being taken by Judge Paredes—the very judge to whom she had applied for that purpose in opposition to Judge Olivarez—she objected to their being taken at all. Thus I could get the in-

ventory taken neither by Judge Olivarez, nor, by ceding to Mrs. Winder, by Judge Paredes. (Vide judicial documents.)

On the 16th of August I again petitioned Judge Olivarez to take the inventory, and renewed my request on the 28th, also begging that he would take measures to enable me to carry out my duties as executor to the estate.

On the 9th of September, Judge Olivarez again referred the documents to the Fiscal (*another one having been substituted for Ampuero, who, not having given a decision in accordance with the wishes of the authorities was never afterwards permitted to give a dictamen in the case*). On the 1st October the newly appointed Fiscal declared that Judge Patron, acting *ad interim* for Judge Paredes, was the judge to act in the case, and not Judge Olivarez.

On the 18th October, Judge Olivarez issued a decree declaring himself incompetent, and ordering the documents to be remitted to Judge Patron, acting *ad interim* for Judge Paredes in the latter's absence.

Thus did Judge Olivarez from the 25th February, 1861, to the 18th October of the same year, retain in his possession the only legal documents in the country relative to the case—viz. Probate of the will and letters of administration. On the 8th of October he sent those documents on which reposed the strength and legality of my position to my adversary's judge.

No inventory had yet been taken; had it been, I, as the legal and lawfully constituted executor, should have been the person to take possession of, and administer to, the estate. Mrs. Winder's object was to get the property into her own hands.

Having prevented the taking of the inventory, Mrs. Winder now prepared to attack the will, obtain possession of the estate, and perpetrate the flagrant violation of the law that followed. Judge Gamboa being considered of all the Peru-

vian judges the most daring and unscrupulous, she selected him as the instrument fitted to carry out her plans. She applied to him on the 12th of March *to be put into possession of the estate for the benefit of HERSELF AND HER SON ; to have the said son taken from my guardianship—IGNORING me as executor and guardian—and placed under hers ; to have declared null and void the will of the testator, and demanding that I should be “arraigado,” that is, confined to the limits of the city of Lima, until I should furnish bail TO HER SATISFACTION.*

In this document Mrs. Winder claimed one-half of the property for herself, and one-half as belonging to her son Michael, the minor, of whom she constituted herself *ex sua autoritate*, the guardian. She demanded that the will be declared null and void, and demanded my “arraigo,” on the plea that I might possibly go back to Europe, and take possession of the property in England—property which, by the way, had been already handed over to me, and to which I had administered under authority of the English Court of Probate. (Vide judicial documents.)

Judge Gamboa fully justified the confidence reposed in him. The very next day he issued a decree granting every article and clause of Mrs. Winder’s demand ; and on these extraordinary allegations—supported by no proof, based on no one principle of law or equity—on this *ex parte* statement of an adversary, I, a British subject, the legally constituted executor of the will of a British subject, who had neither offended against nor disobeyed the laws of Peru, had my personal liberty restricted during nearly five months, and was kept a close prisoner for one year and thirteen days more. My name, during all this time, being placed on the books of the Police at the Port of Callao among those of thieves and felons.

On the 14th March I was notified by a judicial order to consider myself under arrest. On the following day I communicated my position to Mr. Jerningham, and invoked his

interference. (Vide letters to Mr. Jerningham of 15th and 16th March.)

On the 16th March Mr. Jerningham called upon me. He expressed his indignation at the treatment I had received, and informed me that he had that morning called at the Foreign Office, and had an interview with the Minister, of whom he had demanded my immediate release, informing him that the Peruvian Government would be held responsible for any interference with my personal liberty, the more so as I was engaged in carrying out the orders of her Majesty's Courts of Law relating to British property. Senor Melgar answered that he would see to it at once.

If the nature of Senor Melgar's intervention is to be judged by its results, it could not have been to further my release. On the 21st inst. I wrote, through Mr. Jerningham, a protest to the Peruvian Government against the jurisdiction of Judge Gamboa and the arbitrary and illegal power he was permitted to exercise over a British subject. (Vide letter to Mr. Jerningham of 21st March, 1861.)

On the 23rd, I again wrote to Mr. Jerningham, reminding him of the promise made by Senor Melgar, and stating that having gone to Senor Gamboa to inquire whether he had received any instructions respecting my release, the judge had replied that he had received no orders, nor would he, as his power was independent of the Foreign Office, as well as of Mr. Jerningham. I also stated to Mr. Jerningham that important business called me to Chili; that my interests were greatly jeopardised by my compulsory detention in Lima, and demanded a heavy indemnity from the Peruvian Government for every day I should be thus detained. I concluded my letter as follows:—"Sir, I again appeal to the protection of the flag of my country, I again protest against this great injustice, this cruel wrong—against the conspiracy which has robbed the estate, and defrauded the minors of half their property—against the attempts made to wrest from me

what I have fortunately secured and placed under the protection of the British flag—against the spirit of opposition shown me by the authorities of this country, and the impediments they have constantly thrown in my way as executor of my late father-in-law. I am made to suffer this violation of my rights as an Englishman simply because I have placed in safety, and where they were unable to reach it, a portion of the property belonging to the estate. Hence the animus! Hence the arrest!” (Vide letter to Mr. Jerningham of 23rd March, 1861.)

The time was now approaching for the payment of the interest on the consolidated bonds—1st April. Though Senor Ezeta had assured me on the 24th of February, in the name of the Peruvian Government, that the interest would be stopped, and the bonds presented secured—an assurance reiterated by Senor Melgar, Minister for Foreign Affairs, to Mr. Jerningham on the 27th of the same month—my experience of the last few weeks had greatly lessened my faith in such guarantees. I therefore wrote to Mr. Jerningham, requesting he would be pleased to obtain from the Peruvian Government an official notification that the promised orders had been issued. (Vide letter to Mr. Jerningham of 28th March, 1861.)

Mr. Jerningham, more confident than myself, or deeming that after such positive assurances to insist on further ones would seem importunate as well as superfluous, left my request unnoticed. I afterwards saw him, when he informed me there was no cause for anxiety on the subject, Senor Melgar having positively promised to give orders to secure the bonds offered and stop the interest.

The day previous to that on which payment of the interest was due—2nd of April—I called at the Consulado, and inquired of Senor Suero, the director, respecting the notification I supposed him to have received. To my astonishment, he said he had received no notification whatever. I

hastened to Mr. Jerningham, who gave me a letter for Senor Melgar. It being now late in the afternoon, the Foreign Office was closed. The case being urgent, I proceeded at once to his Excellency's private residence, accompanied by a friend, when the following circumstances and conversation took place:

Senor Melgar, on being made acquainted with the object of my visit, said that it was after office-hours, and he would answer it to-morrow. I explained its important nature, and that my visit to his private residence at such an hour was in consequence of Senor Suero having informed me that day, that he had not received any orders with regard to the stoppage of the stolen bonds belonging to the estate; and, as the interest was payable on the next day, I was exceedingly anxious that such orders should be given. The Minister replied: "I HAVE GIVEN ORDERS THIS VERY DAY TO SENOR SUERO THE 'DIRECTOR DEL CREDITO PUBLICO' TO STOP THE BONDS WHEN PRESENTED AT THE CONSULADO, AND THIS DESPATCH WAS QUITE UNNECESSARY."

I remarked that he had promised to do so more than five weeks ago, and Mr. Jerningham and myself thought it would have been done *then*. He replied, "I HAVE DONE IT TO-DAY, AND IT IS ALL IN GOOD TIME." I thanked him and retired.

The next morning I went to Senor Suero, who told me that since our interview in the forenoon of yesterday, he had received instructions from the Minister of Foreign Affairs, and a letter written in February, which only reached him yesterday, 2nd of April—THAT UNFORTUNATELY IT WAS TOO LATE, AS 60,000 DOLLARS OF THOSE VERY BONDS HAD BEEN AMORTIZED A FEW DAYS PREVIOUSLY.

On my telling Senor Suero that Senor Melgar had informed me positively and emphatically that he had given orders to stop the bonds and refuse payment of the interest, Senor Suero smiled, and said that the Minister's orders

were very vague and indefinite, and contained NOT A WORD ABOUT STOPPING THE BONDS, THE INTEREST ONLY BEING MENTIONED. The friend who had been a witness to Senor Melgar's words on the previous evening, and now heard Senor Suero's statement, was as much astonished as myself. The facts and truth were evidently on the side, not of his Excellency the Minister for Foreign Affairs of the Republic of Peru, but on that of Senor Suero, the "Director of the Credito Publico."

Senor Suero afforded me every information in his power, with much seeming good will. He explained to us that before paying the bonds presented for amortization (knowing them to be a portion of those stolen), he had refused in the first instance; but having consulted with the "Minister of Hacienda"—his chief in the department—HE RECEIVED ORDERS FROM HIM TO PAY THEM, which orders it was his duty to obey. The bonds presented for the payment of interest he had allowed to be taken away, merely refusing to pay the interest. (Vide letter to Mr. Jerningham of 3rd April, 1861.)

Thus did a Peruvian Minister of State permit bonds to be amortized, knowing them to be stolen—orders for the arrest of the thief having been issued, and his Government having guaranteed to the British Minister the security of the said property, and that they should be retained when presented at the public office ("Consulado").

Thus, in addition to the amount already plundered from the property of the minors, 60,000 dollars further were lost, directly through the bad faith of the Peruvian Government.

In the present instance, there was not even the scape-goat, Senor Ezeta, on whom to shift the blame. The assurances that the bonds as well as the interest should be stopped had been given by Senor Melgar himself, both to Mr. Jerningham and to me. I will not attempt to explain the motive

Senor Melgar could have had in acting the farce of sending on the 2nd of April a letter dated the 27th of February to stop the payment of the interest, but the whole tenor of his conduct in this affair indicated a premeditated hostility and duplicity, of which I was to have further proofs. One thing was very plain—all the promises and assurances so positively given, were merely meant to lull me into security, and enable such as were interested to secure their plunder.

A few days after my arrival in Lima, I ascertained that Manuel had given out that he held a general power of attorney from his father. Fearing the consequences of such an assertion, I immediately procured a certificate from every notary public in Lima to the effect that Mr. Winder, prior to his departure for Europe, had never given a document of the kind to any one. It subsequently appeared that Manuel, in order to obtain the value of the stolen bonds, had exchanged them for others as well as for real estate, transferring them by a false endorsement. In the criminal proceedings instituted against him, his defender pleaded the possession of a power of attorney. Much to their surprise, however, the certificates proving the contrary were produced. It was then stated that the document had been sent from London, but on its production being required, or the name of the notary public who had drawn it, his lawyer was compelled to give up this allegation also.

The holders of the bonds conveyed by the forged endorsement were subsequently ordered, by a decree, to deposit them at the office of the "Consulado," which order was issued in bad faith, as no attention whatever was paid to it, nor were any steps taken to have it enforced. That the judge who issued the decree had not the least intention that it should be obeyed was so well understood, that I was told of it by several of the holders of the bonds; they had them, they said, and would keep them, and it was absurd of me to suppose that I,

a foreigner, could contend with men who were of the richest and most powerful in Peru, and backed too by their own Government. 60,000 dollars of these bonds were held by Don Pedro Candamo, a well-known millionaire; 46,000 dollars by Messrs. Tordoya and Guayeneche, the latter a brother of the Archbishop; 30,000 dollars by Messrs. Delgado Brothers, &c. &c. Messrs. Tordoya waited upon me and offered to let me have the 46,000 dollars for 23,000 dollars in cash, which sum they said they had lent on them, supposing that Manuel had authority to endorse them. Subsequently, however, seeing the attitude the Peruvian Government assumed towards me, they refused to give them up at all. When the 60,000 dollars were amortized through the turpitude and bad faith of the Minister of Foreign Affairs, Mr. Jerningham, in an official despatch dated 11th of April, demanded the immediate return of the money to the "Consulado," and a decree dated 25th of April, 1861, was issued to that effect by Judge Carillo. This decree was taken as little notice of as the one above mentioned; those who had profited by the amortization well knowing the little importance to be attached to such orders. When I spoke to Judge Carillo on the subject, he replied that the Executive was responsible for the execution of the decrees; it was only his province to issue them.

When complaint was made to the Executive on the subject, the reply was, that they could not interfere with the judicial authorities. This assertion was in direct opposition to the Code which, treating of the powers pertaining to the Executive and President of the Republic, Article 93, paragraphs 7 and 9 of the Constitution, says:

"Requerir à los jueces y tribunales para la pronta y exacta administracion de justicia." *They shall require of the judges and tribunals the prompt and strict administration of justice.*

"Hacer que se cumplan las sentencias de los tribunales y

juzgados." *They shall enforce the carrying out of the sentences of the tribunals and courts.*

It was now evident not only to me, but to all acquainted with the facts, that I was the victim of an organised system of fraud and deceit. Indeed, there was not even an affectation of secrecy in canvassing the facts and the chief actors in the scenes. The unanimity of sentiment on the turpitude and barefaced robbery enacted, was only slightly interrupted by dissentient estimates as to the *precise amount* allocated to the respective functionaries as their share of the spoil.

Camacho, notoriously reputed as the accomplice of Manuel Winder, and known as the confidential *employé* of the Government, was permitted to amortize a portion of the stolen bonds. This Camacho openly stated that by spending 100,000 dollars in bribes to the authorities, the robber of the bonds would be allowed to enjoy the remaining 300,000 dollars with impunity.

I had positive proof given to me that Camacho had (since the flight of Manuel Winder) offered 5000 dollars to a notary public to make a *false general power of attorney*, antedated as given by the late Mr. Winder to Manuel Winder; but that the notary refused to prepare the document for a less sum than 25,000 dollars, saying that out of such a robbery they could well afford it, and that the risk he incurred in the affair was well worth that compensation. He would be obliged to leave the country, as he had already given a certificate denying the existence of said power.

Wishing, as I have already stated, to omit or commit nothing that might give the authorities an excuse for their conduct, I had chosen two eminent lawyers—Senores Téjeda and Albertini—as my counsel. I was, however, informed by those who were more *au courant* of the way in which affairs are managed in Peru, that I must not be surprised if my counsel were bribed or intimidated by the Government, as

such was the custom in important cases like mine. I was incredulous, but subsequent events proved the warning to have been well founded. I ascertained that Senor Melgar had sent for Senor Albertini and discussed my affairs with him. Finding that Senor Albertini did not mention the circumstance to me, I taxed him with it, and said I thought it a most unjustifiable proceeding. He acknowledged that it was so, but alleged that he could not refuse to go when sent for. The result of their conference was soon apparent in the advice given me by this lawyer. *He wished me not to annoy the Government by proceeding any farther with the case.* As I did not think proper to adopt his views, he declined to continue his services.

On the following day my other counsel—Senor Téjeda—called at my hotel and informed me that “*It was with pain and regret, and, he must add, with shame, as a Peruvian, that he had come to tell me he dared not do his duty and take the necessary steps to support me, as his client, for fear of the vengeance of the Peruvian Government.*” He said that he was in a position to show up the whole fraud, together with the complicity and connivance of the Executive and Judicial authorities, but that he dared not, as he would be absolutely ruined; that the Government was vindictive in the extreme, and corrupt from the highest to the lowest, and that all hope of advancement in his profession, for which he had laboured long and arduously, and which he hoped soon to obtain, would be completely cut off if he did his duty as he felt that it should be done in the case.

Senor Téjeda evinced much emotion, and expressed his disgust and abhorrence at a state of things in which the simple performance of duty involved a sacrifice amounting to ruin; but expressed his willingness to assist me in any way that might not offend the authorities. (Vide letter to Mr. Jerningham of 20th April, 1861.)

Thus the counsel who was above corruption was not proof

against intimidation. That the highest authorities in Peru should thus openly bribe, threaten, and coerce the members of the legal profession, and that lawyers of high repute should permit themselves to be so influenced to act against law and conscience, is to Peruvians a perfectly natural and everyday occurrence. In England such things seem incredible, and the fact that a counsel has permitted himself to be so deterred and dictated to, throws discredit on all he may subsequently do or say. This I experienced to my cost.

The strong official current which had set against me since my arrival in Lima was attributable to more than one cause. That I was a Foreigner was in itself a strong motive; but in the proceedings commenced against me by Mrs. Winder, she had the further *advantage of being a relative of Senor Melgar*, and this was considered by the natives a just, proper, and natural reason why justice should be warped in her favour. There was a third cause for my non-success, which, had I been a Peruvian, I might have removed, and thus perhaps have averted the evil results which my ignorance and foreign notions of honesty and honour brought upon me.

A few days after the will had been presented, a person who seemed to be much occupied with the matter, and who attended the courts, presented himself one morning at my hotel, and after some preliminary observations, said that he required a considerable sum of money. On my asking for what purpose, he replied, "*Sir, I must frankly tell you that the judicial machine must be well greased or it will not turn round; and it is requisite for your interests that I give gratifications to all the authorities before whom the case may come, commencing with the judge's clerk and going upwards to the top of the judicial tree.*" I asked him how he dared make me such a proposal? I would never lend myself to so infamous a transaction. He was not the least abashed; but coolly remarked that it was the custom of the country, and no one ever thought of gaining a suit or getting any business done

through the courts without giving gratifications to the legal and judicial authorities with whom he had to deal, according to their rank and importance. I said I had no law affairs to settle, and only required a little assistance to carry out a specific duty; and that he might inform all who expected gratifications, or, in plain terms, *bribes*, that I would stand or fall on different principles. He left with the parting remark that I did not understand my own interests, and would rue my present decision.

Astonished at this cool effrontery, and the business-like view taken of the matter, I mentioned the proposal made to me to an English merchant, long a resident in Peru. He smiled, and confirmed my late visitor's assertion that such was the custom of the country, and that the chances were, my decision would cause me much trouble.

While I was thus subjected to continual annoyance and vexation, and, notwithstanding my frequent and earnest appeals to Mr. Jerningham, kept a prisoner in the town, the robber, Manuel Winder, was being protected and concealed by the very authority which should have brought him to justice. The reward I had offered, 2500 dollars, for his apprehension, while it induced many to give me information of his movements, failed to obtain his arrest. Those who would and could have earned it, dared not brave his protectors. On one occasion, having had notice of his whereabouts, I obtained a warrant for his arrest, but the Intendente of Police most positively refused to execute it. The reason he gave me was, that the house in which the criminal was supposed to be, belonged to a personal friend of his, and he could not offend him by allowing it to be searched. (Vide letter to Mr. Jerningham of 11th April, 1861.)

Soon afterwards I had information, subsequently sworn to at the British Legation, that Manuel Winder was, and had been for some time, concealed in the house of Senor Ponce,

one of the judges. I applied to the criminal judge, Carillo, and requested an order for Manuel's arrest. I added that the ordinary measures offering too many chances of escape, I required the assistance of a number of the police, to act under my immediate direction; also that, as the most absolute secrecy was indispensable, I would only reveal the destination of the expedition at the last moment. I made this stipulation from the fact that, on several previous occasions I had received information of the criminal's hiding-place, and had made expeditions in consequence, always, however, arriving a quarter of an hour too late, an emissary having been sent on beforehand to warn him of the intended visit. The judge, admitting my reasons, gave me the order, which I presented to the Intendente at seven o'clock that evening, and was furnished with eight men under the command of Captain Villar, accompanied by a subaltern. With this escort, and accompanied also by an English and a foreign merchant, my secretary, and my courier, I proceeded to the house of Senor Ponce. When within a short distance of the judge's residence I informed Captain Villar of our destination, and begged that he would use his best endeavours to facilitate the end in view. He assured me that nothing should be wanting on his part. On arriving at the house, my informant, a person named Buendia, as prearranged, met us outside the court-yard, and stated that Manuel, Judge Ponce, and Senor Panizo (a friend of Manuel Winder, who had assisted in his escape) were at that moment together playing cards in a small room to the left of the sala. Captain Villar posted his men to guard the several outlets. We crossed the court and entered the house. Through the upper part of the house-door, which was of glass, we were observed by some persons in the sala, who immediately gave the alarm. As we entered the sala Judge Ponce and Senor Panizo rushed from the room above indicated, each armed with horse-pistols, the former coming so close to me

that the muzzles of the weapons nearly touched my chest, swore that if I did not instantly leave the house, I should drop dead at his feet. I replied that I was sorry his request could not be complied with. I was there under the protection of the law, and to enforce the execution of its mandates. Captain Villar confirmed my assertion by exhibiting the warrant, and requested the judge to lower his pistols and allow the delinquent to be taken from the room in which he was concealed. Judge Ponce replied, in terms such as are not usually expected from judicial authorities, "He was not going to obey the order; he was as good a judge as the one who had issued it; no one had a right to enter his house, especially an Englishman; he hated the English; he had already caused me the loss of thousands of dollars, and would make me lose more yet; and he would never cease to exercise his power against the d—d English." I reminded Judge Ponce that by virtue of his office he should uphold the law, in lieu of obstructing its course by granting protection to a robber he ought long since to have delivered up to justice, and requested him to remove his fingers from the triggers of his pistols, as his hands trembled to such an extent he might discharge them sooner than he intended. The judge replied with a volley of imprecations. I again appealed to the authority of the warrant, and required Captain Villar to do his duty, and take the criminal from the inner room. The captain seemed to be paralysed by the violence of the judge, and instead of at once complying with my request, entered into a discussion with him on the tenor of the warrant. During the few minutes that this had lasted, the judge had retreated three or four paces, still pointing his pistol at me. Finding that the argument was not likely to result in anything, I again bade Captain Villar enter the room and secure the criminal; but he was now evidently under the judge's influence, and but little disposed to do his duty. Observing this, I remarked that I would

myself bring Manuel Winder out, and advanced for that purpose, whereupon the judge sprang to the door, and placing his back against it, swore with frightful oaths that if I advanced a step nearer he would scatter my brains about the floor. His features distorted and livid with rage, and foaming at the mouth, he was literally insane with passion. He vociferously called on his servants to arm themselves and assist him to expel the Englishman, and the room was soon filled with men armed with bludgeons. Had the commander of the police force displayed any energy while the judge was directing his attention to me, they might have easily overpowered and rendered him harmless. Instead of this, they actually enforced his orders, by compelling me to leave the room, literally pushing me out, alleging that it was to save my life; and that, as every avenue was guarded, and there was no other outlet to the room, the robber could not escape. I remained, however, with several others, just outside the glass-door, through which I could see into the room, which was brilliantly lighted. A moment afterwards every light in the house was extinguished—the gas had been turned off at the main; almost simultaneously a derisive shout of laughter arose from the crowd of idlers in the court. The sequel may be readily imagined. When the gas was relighted Captain Villar was invited to examine an empty room, and to search the house. That this ceremony was gone through merely *pro formâ*, was evident from the fact that he never entered an apartment situated in an inner court; on coming to it he asked, “And this?” to which Senor Ponce replied, “My steward has the key, and he is absent!” Captain Villar then remarking that “It mattered not,” passed on.

When Captain Villar and Judge Ponce had finished their search, I noticed a great change in the former; he manifested a decided opposition to any other steps being taken, and ordered his men to retire. As for Judge Ponce, his

farewell was a tirade of scurrilous abuse; he boasted of power to keep me out of the half-million I had been robbed of; he knew, he said, how to succeed in what he undertook; and taking some pieces of money from his pocket, he dashed them on the table, exclaiming, "With this I can have all the witnesses I want at four reals a head!" He added that he was sorry he had not killed me. Senor Panizo, in his turn, said Manuel Winder was his friend, and he would never allow him to be taken.

As it was impossible to persuade Captain Villar to take another step in the affair, I retired with him and his men. We had not gone far when a person came with a message from Judge Ponce, desiring Captain Villar to return to the house, as he wished to speak with him. The object of this private interview we were at liberty to surmise from the smiles and glances exchanged between the parties composing the escort, when their chief left us. We saw no more of him.

All the circumstances connected with this extraordinary affair have been sworn to by five persons, and their depositions transmitted to her Majesty's Government.

In addition to the depositions taken at the British Legation, I wished to have the testimony of Lieutenant Bassan—of the police—and others, who privately informed me that they were willing to state what had occurred under oath, provided I procured an order from the court requiring their evidence. Application to that effect being made to a judge, he stated his inability to take such depositions, another judge being implicated, but that the Corte Superior was the proper place. Application was accordingly made to the Corte Superior, which, to create embarrassment and delay, submitted the case to the Fiscal; what the decision of that functionary was I could never learn, but notwithstanding all my endeavours I was unable to get the depositions taken. Lieutenant Bassan afterwards came to me in considerable

alarm, stating that he had been threatened with the loss of his situation as subaltern in the police, and declared that he would give no evidence in the case.

Judge Ponce on being charged before the Corte Superior with obstructing the officers of the law in the execution of their duty, and with harbouring a criminal, in order to create a diversion, got up a counter charge against me for entering his house. Nothing further was done in the matter.

Her Majesty's Government, being informed of the extraordinary proceedings of Judge Ponce, in a despatch to Lima, pronounced his conduct "scandalous," and expressed a hope that it would lead to his disgrace. So far from Judge Ponce being disgraced, he became a greater favourite than ever with the Peruvian Executive, and the medium through which it vented its spleen on any of my unfortunate countrymen who had incurred its displeasure. He succeeded in murdering James Edwards in seventy-two hours, and also in nearly murdering Captain Melville White, whose naturally strong constitution enabled him to bear up against cruelty and suffering until rescued from impending death by Monsieur de Lesseps.

One of the persons—Buendia—who had given me the information of Manuel being in the house of Judge Ponce, had well nigh become a victim to his temerity in so doing. (Vide Declarations of Manuel Buendia and his brother, sworn to in the presence of her Majesty's Chargé d'Affaires, and Consul-General to Peru, the 21st May, 1862). He went away for six months, trusting that his participation in the matter would then be forgotten. When, at the expiration of that time, he returned to see his family, he was seized by Judge Ponce and thrown into prison, where he remained for some weeks. He was afterwards pressed into the military service, and sent into the interior of the country, from whence it is inferred by those who know "the custom of the country," he is never likely to return. He forwarded a letter or

petition through Mr. Barton to her Majesty's Government, stating the misfortunes which had befallen him, but without any result. I did what I could to ameliorate the condition of his wife and children, who were left in a deplorable state of destitution, without any means of support.*

I was myself repeatedly warned that my own life would be the forfeit of the perseverance with which I was defending my rights; that, if not disposed of by assassination, I would be the victim of an equally efficacious method of compassing the same end—viz. the accumulation of legalised delays, official evasions, falsehoods, wrongs, and vexations of every description. The known delicate state of my health constituted one of the chief grounds for success and impunity on the part of the Government functionaries and others, having a common interest in the appropriation and division of the large sums already stolen, and of those to be plundered from the "Foreigner."

* I had had an interview with Judge Ponce some time previously, when that gentleman had expressed very different sentiments with regard to his friend, Manuel Winder. As it gives some idea of the judge's scrupulous veracity, it may form an appropriate *pendent* to the scene enacted on the 13th May. When Camacho found himself attacked as the accomplice of Manuel Winder, he turned upon me and instituted a suit for a *libel* on his friend! The first intimation I had of it was a notification from Judge Ponce, that if I did not attend at his office that very day he would send me to prison. I complied at once with the injunction, and stated to the judge that had I known my presence was required I would have presented myself there before. He accepted my explanation, was very courteous, said he could not refuse the application, but it signified nothing, it was a frivolous matter which would drop to the ground. He then entered into conversation on the subject of the robbery—said it was the most scandalous case that had ever occurred in Peru—he had no doubt Manuel Winder would make the best of his way to Panama, and advised me to send persons to that port as he had probably gone up the coast in order to leave by the intermediate steamer. It was at Judge Ponce's suggestion, corroborated by advice to the same effect, given by other persons, that I went to Senor Melgar, and stated the probability of Manuel attempting to leave the country. Senor Melgar, said it was a matter in which all classes of the community were interested, and that the government would lend its aid to his capture. He then wrote out an order to the Peruvian consul at Panama to have Manuel Winder arrested should he pass that way. I gave this order to two men whom I sent fifteen hundred miles up the coast to Panama, paying their expenses up and down in the steamer, and keeping them on the isthmus a month at a heavy expense. Meanwhile Manuel was quietly spending his evenings playing "rocambor" with my obliging adviser, Judge Ponce.

I could not but acknowledge the sagacity which had originated this heartless speculation, for my previously enfeebled health was fast yielding to the systematic action and wily combinations of the gang of conspirators by which I was surrounded. On the 5th of June, Senor Téjeda, after reviewing the various incidents connected with my case, declared that it was with grief and shame he felt bound to tell me it would be madness on my part to indulge any further hope of obtaining justice and redress from the Peruvian Tribunals—that he now saw clearly the combination to despoil me had become general, embracing the highest chiefs and lowest subordinates of the Judicial and Government authorities.

After such an intimation from such authority there remained but one course left to me,—viz. the adoption of immediate measures for the prolongation of my life, that I might be enabled at some future day to discharge the duty I can never consent to abandon. I therefore renewed my appeal to Mr. Jerningham, to be permitted to leave the country, concluding my letter as follows :

“Dr. Maclean, whose experience of Peru for more than thirty years has constituted him a sufficient authority, is my medical attendant. He declares my life to be in danger, and that change of air is indispensable to me. Enclosed is his medical certificate. I am arbitrarily detained here, having violated no law. For this outrage I have preferred, through you, my claim for compensation, which I neither relinquish nor abate. But, having no ambition that my death should be added to the already large number of British subjects recklessly murdered in Peru, and for which she will one day have to make weighty atonement to Great Britain, I now, sir, appeal to you, as her Majesty’s representative, for protection and prompt interference to obtain from the Peruvian Government permission for me to travel for change of air, indispensable to the preservation of my life.

“I undertake to give my parole d’honneur, as a British officer and a gentleman, to return to Lima, when my re-

cruited system may permit and my presence may be required to meet any charge that may be trumped up against me." (Vide letter to Mr. Jerningham of June 6, 1861.)

All the despatches of Senor Melgar in answer to Mr. Jerningham's in my behalf, were filled with special pleadings, always parrying or placing the question on grounds totally foreign from the true ones, and endeavouring to make the case a litigious and complicated one. My duties were purely administrative, affecting private property exclusively British, and I in no wise sought to interfere with Peruvian property or Peruvian laws. Neither had I initiated the suit which was pleaded as the pretext for my detention. On the contrary, it was a suit initiated against me in my capacity of executor to the late Mr. Winder's last testament, although, by a strange contradiction, the authorities declined to recognise either the will or me as executor thereof. The object of this suit was to ignore the power of Doctors' Commons and British laws respecting property exclusively British, Senor Melgar himself, going so far as to apply to me the offensive epithet of "the *soi-disant* executor" in an official despatch to the representative of my own Government, under date of April 12th, 1861.

And yet, while my authority remained unrecognised, my adversary, on her *ex parte* statement, had been placed in possession of a large portion of the property—an act altogether illegal by the laws of Peru. Indeed, had the *Code* been consulted and acted upon, I would never have had cause for complaint. The Peruvian laws are just, equitable and clearly defined; unfortunately, the authorities called to administer them are corrupt and venal in the extreme, and either disregard them entirely or pervert and warp them to their own iniquitous uses.

On the 14th of June I again urgently appealed to Mr. Jerningham, concluding my letter as follows:

"My life is, according to the testimony of the highest medical authority here, in danger, and if my birthright of a

British subject be of any avail, it is now I require it, now I ask it, and the just protection of that flag under which I have served in her Majesty's army for so many years. I now have to request that under the trying circumstances in which I find myself, the Peruvian Government having refused to listen to your appeal, that you *demand*, in the name of her Most Gracious Majesty the Queen, that I may be at once released (and you may guarantee my return)—not as an act of grace on the part of the Peruvian, but as the demand of the British Government.

"Sir, the British Government and the British people will support you in so plain and imperative a duty, so humane and necessary an intervention. I must not be sacrificed as a victim to Peruvian vengeance because I respect and honour the laws of my country, and have the temerity to think they should be my guide in dealing with British property. There is a limit to suffering undeservedly—there is a limit to forbearance—it has been reached.

"Do not forget that I am acting under the instructions of her Majesty's Courts and the Attorney-General of the British Government.

"I demand your prompt intervention in my behalf and the benefit of that power vested in you (and such as you, all over the globe) for the protection of even the poorest and most humble of the children of Great Britain.

"You can save me from my impending fate (if the doctors speak truly); you are able by the power vested in you to do so, and will be supported by the Home Government in so doing; but if you do not, then I shall have been a British subject thirty-six years in vain, and become one more to be included in the list of British subjects foully murdered by Peruvians."

On the 27th I reiterated my appeal to Mr. Jerningham, sending him the medical certificate of Doctors Maclean, Kinney, and Tasset, the former a North American, and the latter a French physician, recommended by Monsieur de

Lesseps, the French Chargé d'Affaires in that city. Mr. Jerningham finding his own intervention had been answered by a blunt refusal, then took higher ground, and made a formal demand in the name of her Most Gracious Majesty the Queen of Great Britain, that I should be released and permitted to change climate. The reply was again a refusal, couched in impertinent and insolent language, from the Peruvian Minister for Foreign Affairs. The tone of that answer may be judged of from the fact that the "Corps Diplomatique" in Lima considered it so insulting that they addressed a remonstrance to the Peruvian authorities, and endeavoured to arrange the matter between the latter and Mr. Jerningham.

When the "Corps Diplomatique" considered that despatch insulting to the whole body, how much more so must it have been to him to whom it was addressed, in answer to a formal demand made by him in the name of his sovereign! (Vide letter of Monsieur de Lesseps of Sept. 29th, 1861, at page 45.)

Mr. Jerningham informed me that he had sent a copy of the despatch to her Majesty's Government. He also said that he felt much inclined to suspend all diplomatic relations until he received instructions on the subject from home.

Although the personal remonstrances and official intervention of Mr. Jerningham had been alike unsuccessful, though to his demand in the name of humanity, and to his demand in the name of his Government, Senor Melgar had returned flippant and insolent refusals, the presence of the British Chargé d'Affaires was still a check on the authorities and saved me from actual incarceration. When Judge Gamboa had threatened me with imprisonment, Mr. Jerningham had assured me he would never permit such an outrage; should the attempt to carry it out be made, I was to go at once to the Legation. He was, however, loth to believe such extreme measures would be resorted to; he thought the threat was intended merely to intimidate me into submission, and that it was impossible I could be punished

for an act that had taken place under the British flag, and to which he had himself been a party. On the eve of his departure for England, on my expressing misgivings as to what might be done in his absence, he reiterated his conviction that I was quite safe, but told me that he had provided against any contingency by instructions to Mr. Barton, his successor *ad interim*, who would afford me the protection I might require.

Mr. Jerningham was mistaken in his previsions—his departure was the signal for an act of overt and vindictive hostility which, had it succeeded, would have amounted to actual assassination. Two hours after he had left the city, on the 29th of July, a sentinel was placed at the door of my apartments in the "Hotel Morin," and I was officially informed that at the expiration of six days, I should be removed by force to the loathsome dungeons of the "Carcelletas," situated in the "Plaza de la Inquisicion" unless I effected the recal from England—whither it had been my sworn duty to transmit it—of certain British chattel-property delivered to me for that purpose by her Majesty's representative, in Lima, I being the only individual recognised by Great Britain, and especially appointed by her laws, to discharge such duty. In the face of this new danger, and in accordance with Mr. Jerningham's instructions, I wrote to Mr. Barton, her Britannic Majesty's acting Consul-General, asking him to protect me from being thrown into prison.

To this appeal Mr. Barton made no written reply, but informed me verbally, that he had not yet been received and recognised as her Majesty's Chargé d'Affaires *ad interim*, adding that I was "to go to prison and forward a protest to him, which he would send to England by the mail that was to leave on the 14th instant!"

The steps taken by the Peruvian authorities were suggested by a knowledge of the English authority with whom they had to deal. It was well understood by all concerned, that Mr. Jerningham would never have permitted me to be made

a victim for an act which had taken place under the British flag, in the Legation, and in which he was a principal actor. As he was about to leave the country, it was safer to wait; and, in the meanwhile, a scheme was concocted which, for petty malice and low cunning, was worthy the originators. Mr. Jerningham had presented Mr. Barton, as his successor, in the usual way, two or three days previous to his departure, and no objections were made until he had sailed. *Then* the Peruvian Government declared there had been some informality in Mr. Barton's presentation, and that her Majesty's Government was without a representative in the country!

I again appealed to Mr. Barton in his official capacity as Consul, and concluded my letter as follows :

"To-morrow being the day appointed for throwing me into the vile dungeon of the 'Carceletas, Plaza de la Inquisicion,' you must be aware that your official reply coming to me *on* or *after* Wednesday next (14th instant), as you suggested, could in no wise *affect* or *avert* the fate impending over me at this moment, and to be executed to-morrow. With the view therefore to ulterior and efficient measures for my protection and safety (which cannot now be postponed), I must solicit again the favour of an immediate reply from you **IN ANY OFFICIAL CAPACITY** you may see fitting to render it." (Vide letters to Mr. Barton of the 3rd, 4th, and 5th August.)

To this letter, as well as to the preceding ones, no reply was sent. Having waited for some communication from Mr. Barton until the last moment, I sought from the French flag the protection I could not obtain under my own, and addressed the following letter to Monsieur Edmond de Lesseps, Chargé d'Affaires of his Majesty, the Emperor of the French :

Morin's Hotel, Lima, August 4th, 1861, 12 o'clock P.M.

SIR,—The very peculiar circumstances (unprecedented where pretensions exist to the character of civilisation) under which I have the honour to address you will, I hope, be recognised as justifying a step to which I am compelled to resort by the utterly unprotected position in which the departure of her Britannic Majesty's Representative, the Honourable William Stafford Jerningham, from Lima, has left me. The accompanying copies of letters, addressed to Mr. Consul Barton, which I take the

liberty of enclosing for your perusal, will make your Excellency acquainted with the exigency of my case and the precariousness of my position. This latter-named individual declining to make any official or written communication in reply to my urgent solicitation, I, as a faithful subject of the Queen of England, a British soldier, having the honour to hold three commissions under the sign manual of her Majesty, find myself, from the seeming indifference, timidity, or want of knowledge of first duties, on the part of this British functionary, compelled to seek temporary protection at the hands of the Representative of my sovereign's ally, the Emperor of the French; and I do so with the less difficulty or hesitation, because I feel, were it possible for such a contingency to arise, with altered nationalities, it would be a source of pride and pleasure to a British Minister to protect from unlawful oppression and unprovoked persecution an unoffending soldier or citizen of the French Empire.

I have the honour to be, &c. &c.,

HENRY DE WOLFE CARVELL.

That which had been refused by Mr. Barton was promptly and cheerfully accorded by Monsieur de Lesseps, and, to the surprise and chagrin of the British community, a fellow-subject was constrained to take refuge under a foreign flag.

The disinterested interference of the French Minister, however, was ineffectual to avert the display of Peruvian malignity. On the following morning a number of armed soldiers and bailiffs made their appearance at my hotel, where I was still supposed to be, accompanied by a mob, invited to witness the degradation of an English gentleman dragged through the streets to the "Carceletas." The bailiffs placed four sentinels at the different outlets, and, with four other soldiers, entered and searched the rooms I had occupied. The disappointment of the rabble outside was due to French, not English interference. I had given notice to Mr. Barton of my appeal to the French Chargé d'Affaires, and of his intervention in my behalf. That letter, like the preceding ones, remained unanswered. It was a peculiarity eminently characteristic of that gentleman's excessive prudence never to commit himself in writing, so long as he could possibly avoid it. In my position, however, this was most cruel and tantalising. (Vide letter to Mr. Barton, August 9th, 1861.)

Monsieur de Lesseps notified the Minister of Foreign

Affairs officially that I had been received at the French Legation. Senor Melgar's reply was to the effect that the French Minister had no right to afford me protection, as I was a British and not a French subject, and that the Peruvian authorities would take me out of the Legation. Monsieur de Lesseps informed Senor Melgar that such a step would be fraught with the most disastrous consequences to Peru; that if he had any complaints to make they should be addressed to the Cabinet of the Tuileries; the French Minister could admit of no promptings on the part of Senor Melgar as to the manner of conducting affairs at the French Legation. He also stated that no government or tribunals had a right to take cognizance of acts that had taken place, in a Legation, between a Foreign Representative and a subject of that Representative's Government, without violating the privilege of personal jurisdiction, consecrated by universal custom and by all legal authorities. In affording me the protection of the French flag he defended, not only my threatened life, but a right of which the "Corps Diplomatique" were the responsible guardians (the grounds of the imprisonment being the box of bonds delivered by Mr. Jerningham to me in the British Legation, and consequently out of Peruvian jurisdiction).

Monsieur de Lesseps was, moreover, convinced that in the course he was pursuing he was doing good service to the Peruvian Government, and saving it from the consequences which the death of a British subject, brought about under such circumstances, would inevitably have entailed. The feelings that actuated him are expressed in a letter written to me in acknowledgment of one in which I tendered my heartfelt thanks to him for his timely intervention, and from which the following is an extract :

Lima, Septembre 29, 1861.

MONSIEUR LE CAPITAINÉ,—J'ai reçu la lettre que vous m'adressiez le 19 de ce mois, en me remerciant de l'asile que vous avez trouvé dans la Chancellerie de France à l'époque où l'honorable Monsieur Barton n'avait pas encore été reconnu comme agent diplomatique de votre gracieux

Souveraine, car il ne vous était pas permis alors de vous réfugier sous votre propre bannière pour vous soustraire au décret d'arrestation rendu contre vous et qui compromettait à la fois vos jours et votre liberté. Tout en vous remerciant avec effusion des termes flatteurs qu'emprunte votre reconnaissance et en rendant hommage aux sentiments qui les ont dictés, vous me permettrez, monsieur, de ne pas les accepter dans toute leur étendue. Notre rôle en pareille circonstance, nous était rigoureusement indiqué; d'un côté par l'intime et solide alliance qui unit nos puissants souverains et nos deux nations. N'était ce pas en l'absence d'un représentant accrédité de l'Angleterre, à l'agent de l'Empereur que revenait l'honneur et le devoir de protéger et de défendre les intérêts et les droits de vos compatriotes? D'autre part, ne donnions nous pas un nouveau gage de nos sentiments envers le Pérou, que nous servions au risque de lui déplaire, en rendant impossible l'exécution d'un jugement sans base comme sans motif, qui n'est que l'erreur de juges oublieux des principes les plus élémentaires du droit des gens. Ni gouvernement ni tribunaux ne pouvaient s'immiscer dans des actes passés en Chancellerie entre un chef d'une mission et son administré, sans violer le privilège de la juridiction personnelle consacrée par la pratique universelle et par l'unanimité des publicistes sur la matière. Un but multiple était donc atteint: défendre un droit dont le corps diplomatique était solidaire et qu'il s'est empressé de réclamer dès qu'il l'a vu méconnu, sauvegarder votre existence menacée au dire des gens de l'art les plus autorisés, et enfin épargner au Pérou une dangereuse responsabilité si vous eussiez succombé dans ses prisons. Cet événement devenait le point de départ d'accusations aussi graves que méritées de votre cabinet contre celui de Lima, d'autant plus compromis qu'il avait été officiellement averti de la gravité de votre maladie comme des conséquences mortelles d'une incarcération. D'après cela, monsieur, rien de plus naturel, que vous trouvassiez un refuge sous le pavillon français. L'alliance de nos deux pays, l'humanité, le droit et notre bon vouloir envers le gouvernement du Général Castilla, tout semblait s'être réuni pour l'expliquer et le justifier.*

* MONSIEUR LE CAPITAIN, —I am in receipt of your letter of the 19th instant, in which you return me thanks for the asylum the French Legation afforded you at a time when the Honourable Mr. Barton had not yet been recognised as the diplomatic agent of your gracious Sovereign, and you were not permitted to take refuge under your own flag, and thus avoid the execution of a decree of arrest that threatened both your liberty and your life. I thank you, sir, for the flattering expressions your gratitude dictated; but while I fully appreciate the feelings that suggested them, I must decline accepting all the credit you attribute to me. The part we took was one strictly enjoined upon us under such circumstances; on one hand by the intimate and firm alliance which unites our powerful sovereigns and our respective nations; for to whom but to the Agent of the Emperor, in the absence of an accredited representative of England, did the honour and duty belong of protecting the interests and rights of your countrymen? On the other hand, in thus rendering impossible the execution of a judgment based on no grounds or motives, and which was merely the error of judges forgetful of the most elementary principles of the "Droit des gens," we were giving to Peru a fresh proof of friendly feeling, and doing her good service at the risk of incurring her displeasure. Neither government nor tribunals could take cognizance of acts that had passed in a Legation between the representative and a subject of the country he represents, without violating that principle of per-

Monsieur de Lesseps concluded his letter with hopeful anticipations of my prompt release through the good offices of Mr. Barton. Those anticipations were not destined to be realised.

The conduct of the French Chargé d'Affaires towards me met with the entire approbation of the Cabinet of the Tuileries. The circumstances having been under consideration at a meeting of the "Corps Diplomatique," held at Senor de Lisboa's, the Minister Plenipotentiary of his Majesty the Emperor of Brazil, on the 22nd instant, it was unanimously decided by the representatives of the Foreign Powers there assembled, that the outrages committed against me by the Peruvian authorities were of so gross and flagrant a character, that the principle would endanger the liberty and interests of Foreigners generally, and of their own subjects in particular, in Peru. The protection afforded me by the French Minister was also warmly approved of.

Mr. Barton had steadily continued to assert to the Peruvian Government that he *was* the representative of Great Britain—notwithstanding their refusal to acknowledge him as such—and cited Lord Russell's letter of recent date appointing him to fill that post during Mr. Jerningham's absence. Mr. Barton's refusal to receive me at the Legation was, however, in direct opposition to the position he assumed *vis-à-vis* the Peruvian Government.

The Executive finding that this scheme had failed, and

sonal jurisdiction which universal custom, and the unanimous opinion of all writers on international law have rendered sacred. A threefold end was attained by the protection afforded to you; the defence of a right of which the "Corps Diplomatique" were the responsible guardians, and which it hastened to claim the moment that right was invaded; the saving of your life, which we knew from eminent medical authority to be endangered; and, finally, the sparing Peru the dangerous responsibility she incurred in the event of your death taking place in her prisons. Such an event would have given rise to accusations no less severe than deserved from your Cabinet against that of Lima, the latter being still further compromised from the fact, that it had been officially notified of the serious nature of your illness, as well as of the mortal consequences that would follow incarceration. Hence, sir, nothing was more natural than that you should find a refuge under the French flag. The alliance of our two countries, law, humanity, and our kindly feelings towards General Castilla, all combined to explain and justify the course we pursued.

that I was in safety, and knowing that the grounds for objection to Mr. Barton were perfectly untenable, now recognised him in his official capacity.

M. Vion, the Chancellor of the French Consulate, had generously assigned his own apartments at the Legation to me, and I was loth to trespass on his kindness any longer than was absolutely necessary. I therefore communicated officially to Mr. Barton a suggestion which, if acted upon, could not have failed to meet and remove existing difficulties. I offered to re-deposit in the Legation the amount of the bonds which had been delivered into my hands by the Honourable William Stafford Jerningham. The Peruvian authorities being then made officially acquainted with the fact, could have no further pretence for detaining me a prisoner. This letter elicited the first written communication to me from Mr. Barton. He wrote to say he could not accede to my demand. He furthermore added he had expressed his thanks to Monsieur de Lesseps for the asylum that gentleman had given me! (Vide letter to Mr. Barton of August 11, 1861, and letter of Mr. Barton dated August, 1861.)

I forwarded to Lord Russell, on the 14th of August, the following despatch :—

MR LORD,—The very inopportune departure of the Honourable William Stafford Jerningham from Peru, and the circumstances consequent thereon threatening my very existence, compel me to depart from the ordinary routine in the hope and with the design of bringing under your Lordship's immediate and personal cognizance, the cruel and humiliating position to which I am reduced, for no other crime than that of fearlessly and faithfully obeying the instructions of the Attorney-General in the discharge of my duty as executor to the estate of the late Mr. Michael Winder.

With this view, therefore, I most respectfully beg leave to enclose to your Lordship that portion of correspondence with Mr. Jerningham's successor which has accrued since Mr. Jerningham's departure from Lima. The personal indignities heaped upon me by the Peruvian authorities are simply the result of a system, and I am convinced that until your Lordship shall have had a clear insight into the more enlarged question of this continuous course of injustice and contumely with which the Peruvian authorities of every grade treat British subjects, it would be unreasonable to expect any extended or comprehensive measure of chastisement on the part of her Majesty's Government.

My solicitors, Messrs. Dawes and Sons, have had instructions to furnish

your Lordship with details of my case, which, if properly explained, cannot fail to make your Lordship aware of an amount of undisguised iniquity on the part of the authorities here, calculated to secure for me your Lordship's sympathies and protection.

I have the honour to be, &c.,

HENRY DE WOLFE CARVELL.

About this time, Mr. Barton having signified his willingness to receive me, I prepared to remove to the British Legation. The distance between the Legations being about half a mile, the question arose as to how I should accomplish the journey safe from interference on the part of the Peruvian authorities. To obviate any difficulty of this kind, Senor de Lisboa, the Brazilian Minister, sent his state carriage, and the Secretary of the Legation, to convey me, and I was accompanied by the French Minister and Mr. Barton, in uniform. This arrangement was notified to Senor Melgar on the preceding evening by Monsieur de Lesseps and Mr. Barton, and the Peruvian Government informed that no interference would be permitted.

Her Majesty's Government being informed by Mr. Barton of all the circumstances attending my taking refuge in the French, and my subsequent removal to the British Legation, approved of such removal, and directed Mr. Barton in a despatch, dated on or about November 1st, 1861, to protect me from "*ill-treatment and arrest.*" Under such circumstances, I was justified in hoping that measures would be speedily taken to render me the justice so long withheld.

But week after week, and month after month, went by and I was still a prisoner. Having received instructions from Lord Russell in a despatch, dated on or about October, 1861, to conform to the jurisdiction of the Peruvian Courts, I did so. To this end I gave a power of attorney to Mr. Charles Henry, of Lima, to represent me in everything pertaining to the will of the late Mr. Winder. *This power was presented on the same day—16th of September—to Judge Gamboa, accompanied by an application requesting that the arraigo might be taken off. In accordance to the law, the arraigo should

have been taken off at once. My demand was not denied; but the result was equal to a denial. Judge Gamboa decreed that the arraigo should be taken off, but, by a note appended, making that decree *conditional on the approbation of my adversary*, rendered it nugatory. Thus was the law violated in the spirit and in the letter.

On the 25th I presented to the Judge a medical certificate of the state of my health (a copy of which I also enclosed to Mr. Barton), signed by two doctors—one the Proto-Medico of Lima, a gentleman appointed the head of the Facultad de Medicina de Lima, by a decree of the Supreme Government; the other, Dr. Maclean. The certificate set forth the urgent necessity for my immediate removal to a purer atmosphere than that of Lima. On the strength of this document I implored the Judge to take off the order of imprisonment decreed against me. My application was refused.

Not the least of the difficulties with which I had to contend was that of inducing a lawyer among those reputed to be the best in Lima, to conduct my case and defend my interests. When Dr. Téjeda had given it up lest he should imperil his prospects, the case had been taken up by Dr. Gutierrez, and for a few weeks he conducted it with zeal and energy. He pleaded it in the Supreme Court. Holding up the probate of the will and letters of administration to the five Judges assembled on the Bench, he besought them in the name of justice and the honour and well-being of Peru, to take into consideration documents which provided so clearly for the legality of my position, and were a solemn protest against the injustice with which I was treated. He called their attention to the seal and certificate of the Peruvian Legation in London, in proof of their *bonâ fide* character. This was the more requisite as my antagonists had actually accused me of having forged those documents. (Vide Judicial Documents.)

Dr. Gutierrez was interrupted in his appeal by the judges on the Bench, and ordered to be silent. They refused to look

at the will and letters of administration, stating they neither recognised me nor my documents. This reproof elicited loud applause from the loungers in the Court. The opposing lawyer then commenced a harangue, in which the most opprobrious epithets were applied to me. In language more violent than eloquent, he attacked England and her laws, beseeching the Court NOT TO BE AFRAID OF ENGLISH CANNONS, AND NOT to permit any property belonging to foreigners to be taken out of the country. This address was greeted with acclamations.

Among the judges who thus impeded the course of justice, coercing and intimidating its advocates, there was an honourable exception in the person of Judge Mariategui, the most distinguished judge and jurist in Peru. Convinced of the justice of my cause, he did all in his power to aid and assist me, but was outvoted by his colleagues. It was, however, to Judge Mariategui's energetic exposition of the discredit and disgrace that would accrue from the course pursued in my case, and of the heavy indemnity which the country would probably be called upon to pay, that I was indebted for the criminal sentence recorded against Manuel Winder, a sentence which has remained a dead letter to this day.

The following letter written to me by Mr. Henry, the holder of my power of attorney, will give some idea of the repugnance shown by the bar of Peru to undertake to plead a cause to which the Government had shown itself hostile. This letter, dated October 23rd, 1861, was forwarded to her Majesty's Government :

DEAR SIR,—I regret to say that all my endeavours to find, among the distinguished members of the Lima bar, a lawyer who will plead your case before the Supreme Court, have been vain. Those on whom we chiefly relied, have forsaken us like cowards when their services were most required.

You know how much faith we had in the promises of Senor Cisneros; he has refused to keep them. Senores Loaysa, Téjeda, Albertini, &c., have followed his example. Others have manifested decided hostility. Senor Arenas being the partner of Senor Loaysa could not well act in opposi-

tion to him—nor would he, notwithstanding his real ability, have been the proper person to plead the case in open court. From the extreme coldness shown by other lawyers, I am led to conclude they are all afraid of compromising themselves by any intervention in your affair. I think the safest and most prudent course will be for you to draw up a statement yourself, adding thereto all the facts, which, even up to a recent date, corroborate it, and prove your rights. This document presented to the Court, will, if any vestige of shame actuate the judges, prove as effectual as a lawyer's pleading, could the Court be brought to forget for a while that you are an Englishman, and mete out as impartial justice to you as to any descendant of Manco Capac, you might hope for redress.

Yours, &c.,

CHARLES HENRY.

To those who have not resided in the South American States, it may seem incredible that eminent barristers, that lawyers of high standing, should permit themselves to be dictated to, or otherwise induced to give up the cause of a client—that judges should come into court predetermined as to the issue of an untried case. To Peruvians, these things are simple everyday facts. So vindictive and cruel was the Administration then in power, that those who had families depending on their exertions might well fear to blast their prospects, and perhaps even endanger their lives, by opposition to its will. Might was right, and vengeance was sure to overtake the daring man who attempted to contend with power.

A lawyer who had had the temerity to oppose the views of Government in a case before the Courts, was taken out of his bed at night, put in irons, placed on board a Peruvian ship of war in the harbour, and finally sent to Chili, with the intimation that if he again appeared in Peru, without permission, he would be immured in the dungeons of the ancient Inquisition, than which nothing can be more terrible.

Magistrates and judges were no less amenable to punishment than lawyers, if they presumed to oppose the sanctity of law to the arbitrary decrees of the reigning autocrats. All the time the executive was asserting, as an excuse for its conduct in my affairs, that the Judicial Power was independent of it, that very Executive was expatriating General

Echenique in direct opposition to the Courts of Lima. The judge who had declared the General guiltless was summarily and ignominiously dismissed. General Castilla, walking into his office, abused him in the most violent terms in the presence of his suite, and finally turned him out of it.

Mr. Barton informed her Majesty's Government of this outrage perpetrated by the Executive in direct contradiction with its reiterated assertions to him that it could not interfere with the judicial authorities.

In my own case I found eminent and highly respectable members of the bar willing to give me their written opinions—the difficulty was to induce them to come forward and plead for me in court, and this unfortunately could not be understood in England, as is apparent from the following paragraph in a despatch from Lord Russell, under date of the 29th September, 1862 :

“It is impossible to demand redress for an unjust decision, because certain advocates, too timid to appear openly in court, express on paper a different opinion upon the law of the land from that which has been judicially delivered by a judge.”

The lawyers above alluded to were among the most honourable as well as the most able in Lima. Their written opinions were given in three consultations : one between Drs. Cisneros, Arenas y Loaysa ; another between Drs. Pacheco and Hurtado ; a third between Drs. Gutierrez and Sanchez. Dr. Arenas, a man in high position—an ex-minister of state, a cabinet minister under the present Administration—was considered one of the most profound lawyers in Peru. The others were men of the highest standing in the profession. The paragraph in the despatch is grounded on a note appended to one of my own despatches, in which I very inadvertently said—speaking of the lawyers whose consultations I was sending home : “These are the men who declined to defend me in court.” This note, however, ought not to have included all the lawyers who had given their written opinions,

as some of them had previously taken the case into court. Dr. Arenas had for some time given up pleading. Dr. Cisneros had, at one time, declined defending me openly for the reasons I have stated, but he still continued to afford me his valuable advice. At the close of the late Administration, he again undertook to defend me in open court.

In the meanwhile my forced residence under the British flag, though it ensured me against actual violence, subjected me to all the inconvenience of close confinement. For over a year I was shut up in the walls of the Legation, within twelve degrees of the equator, debarred from taking exercise or change of air; and that, too, during the unhealthy season, when not only acclimatised European residents, but even the natives of Lima, seek a refuge from its pestilential miasmas in Chorillos. Nor did my adversaries trust to the climate only; every means that could annoy, disgust, and weary out a man's patience, was resorted to, in order that, disheartened and debilitated, I should give up the contest, and leave them in quiet possession of the spoils they had wrested from me. Nor could a more appropriate person have been chosen to conduct a persecution which was evidently meant to hurry me into a premature grave. Judge Gamboa was zealous and indefatigable. From the 13th March, 1861, orders of arrest and interdiction had been launched against me. The testator's legitimate son, Michael, of whom I was appointed guardian in the will of the father, had been taken from me, and Mrs. Winder had been put in possession of the real estate, being from that time not only in receipt of the rentals accruing from it, but also permitted to embargo at the Consulado the bonds which Mr. Jerningham had delivered to me.

In addition to the many illegal acts perpetrated by Judge Gamboa there were innumerable judicial quibbles and snares, by means of which he sought to entrap me, and from which it was almost a miracle a foreigner could escape. My opponents incessantly brought forward trivial points, there called

"Incidentés," carefully avoiding the main questions—viz. the validity or non-validity of the will, and my being the legally appointed executor thereof. So long as the authorities are complaisant enough to allow those incidentés to be carried from court to court, a litigant, acting in bad faith, and wishing to retard the decision of a suit, can prolong it *ad infinitum*. With these, as with other ingenious legal and illegal contrivances to compass the same end, I was made acquainted to my cost. My constant endeavours to bring about a decision in the case were met by multiplied "*incidentés*." A sentence in my favour, establishing the validity of the will, would have been an acknowledgment of the injustice done me—a sentence of nullity would have brought about the interposition of my Government—it was safer to give no sentence at all. Thus, the person who instituted a suit to have the will declared null and void was permitted to prevent its decision!

Marvellous fertility of invention was displayed in the creation of obstacles to impede the solution of the main question. Seven frivolous lawsuits on the most absurd and untenable grounds—such as libel, defamation of character, entering the house of Judge Ponce, and others of a like nature—were instituted. Against these purely vexatious suits I was obliged to defend myself. These were carried on with great vigour, while every subterfuge was used to avoid the decision of the validity or non-validity of the will. A fabulous claim was brought by a man of the name of Velasquez, at the instigation of Judge Ponce, immediately after the scene at his house consequent on the detection of his harbouring Manuel Winder. This Velasquez called upon me, and stated that he had a claim against the estate, of 150,000 dollars, which I had better compromise, as Judge Ponce was his friend and would take the matter up. Finding his threats as unheeded as his claim, he lowered his demand, first to 20,000 dollars, and finally to 7000 dollars—which he expressed his willingness to accept, that I might be spared trouble. I told him he was wrong to think of sacrificing

143,000 dollars, and advised him to prosecute any claim he might have. He departed, swearing he would make me pay the amount originally demanded, but I heard no more of him.

When Judge Gamboa issued his decree of the 14th March, 1861, against me, there was another on the same document, ordering that the interest on the bonds belonging to the property of the late Michael Winder, as also the rents of the houses and interests on various sums as they became due, should be deposited in the house of Messrs. Zaracondegui and Co., the sum of 200 dollars per month being deducted therefrom as maintenance for Mrs. Winder. The highest legal authorities in Peru had declared, in consultation (*vide* consultation), those decrees to be illegal, and a violation, not only of international law, but also of the laws of Peru. Still, as those decrees had been carried out to the letter when prejudicial to me, I naturally concluded that the one touching the deposit had been executed with equal stringency. In this I was greatly mistaken, as may be seen in documents presented at the Legation, the copies of which, certified to by Mr. Barton on the 20th January, 1862, were sent to her Majesty's Government. The first is a letter from Senor Aliaga, as my "procurador," to Messrs. Zaracondegui, inquiring whether the deposit above alluded to had been effected; the other, the reply of that firm, stating that they knew absolutely nothing of such deposit, or of any order with regard to it. (*Vide* letter of Senor Aliaga to Messrs. Zaracondegui, and their answer.)

Mr. Barton being aware of the nature of the decree issued by Judge Gamboa on the 14th March, 1861, on learning the result of the application to Messrs. Zaracondegui, declared that he considered my case gained, as so undisguised an evidence of partiality shown to one party, so gross an injustice to the other, would convince her Majesty's Government of the little redress to be expected from the courts, and of the urgent necessity for diplomatic intervention. So important did Mr. Barton consider these facts, that he for-

warded certified copies both of the application to Messrs. Zazacondogui and of their reply, to Earl Russell. For my own part, I was convinced, as were all acquainted with the circumstances, that, on receipt of this information at the Foreign Office, prompt and efficient measures would be taken in my behalf.

Thus, Mrs. Winder has, since the month of March, 1861, been permitted to collect and keep to her own use the above-mentioned moneys. In this she was aided and abetted by Judge Gamboa, whose proceedings were connived at by the Peruvian authorities. The hostility of that Government to me, and the motives for that hostility, are notorious in Peru. But, however simple, natural, and proper they may appear there, it is difficult to render such facts and such motives intelligible to men of honour or common honesty, who have never been in Peru, and who are six thousand miles from the scene of these occurrences. (Vide letter to Mr. Barton, January 27th, 1862.)

The long confinement I had been compelled to endure, the influence of the climate, and the continual annoyances to which I had been subjected, had brought me to so low a state at the end of the eighteenth month, that no hope was entertained of the further prolongation of my life under such circumstances. To the arrival in Lima, at this critical juncture, of the Honourable J. W. S. Spencer, commanding her Majesty's ship, "Topaze," I may safely ascribe the partial recovery of my strength. The ship had sailed from the port of Callao on the eve of the day the Peruvian authorities had attempted to throw me into prison. Returning about the same period in the following year, Captain Spencer was grieved at the state in which he found me. He invited me on board and placed his cabin at my disposal. The prospect of change was hailed with delight, and the invitation gladly accepted; the difficulty was how to avail myself of it.

Mr. Barton stated that, while convinced of the immediate necessity for my removal, he did not like to assume the

responsibility of it; he deemed that in so doing he would be going in advance of his instructions from her Majesty's Government, which were to protect me "from ill treatment and arrest." I asked him if he thought a medical board would remove any scruples he might have. There were at the time medical officers of the British and French navy in port. Mr. Barton approved of the suggestion—he was of opinion such a course would strengthen any measures taken for my removal. Captain Spencer had offered the services of Dr. Forbes, the chief medical officer of the "Topaze," and of Dr. Lucas, of her Majesty's store ship "Naiad;" and Monsieur de Lesseps, those of the medical officers of the French ship of war "La Cornelié." A medical board was accordingly assembled, and the following report, which I forwarded to Mr. Barton, dated August 8th, 1862, was signed by six eminent physicians:

This is to certify those whom it may concern, that, we, the undersigned, have this day carefully examined into the state of health of Captain Henry de Wolfe Carvell, at present residing at the British Legation, Lima, and find that the said Captain Carvell is labouring under hypertrophy of the heart, with aneurismal dilatation of aorta, which disease, according to his own statement, has existed for several years, and has now attained an advanced stage.

This disease, from its nature, little amenable to treatment, and necessarily ultimately fatal, is one requiring the utmost repose, both of body and of mind.

All emotional exciting causes tend to hasten a fatal termination, and it becomes our duty to urge the great necessity of Captain Carvell's immediate removal from the pressure of the peculiar, exciting, and disturbing causes which are in operation—causes which can have but one effect; namely, to shorten such period of life as may yet remain to him.

Understanding that said exciting causes are connected with certain legal proceedings now in action in the courts of law—we earnestly recommend that Captain Carvell be at once removed from Peru, and be allowed to rejoin his family; where he may meet with, and have the benefit of, those soothing attentions of affection which his case so much requires.

Given under our hands at the British Legation, Lima, this eighth day of August, one thousand eight hundred and sixty two.

(Signed)

CHARLES FORBES, M.D.,
M.R.C.S. Eng., Surgeon, R.N.
LEONARD LUCAS, Asst. Surg. R.N.
E. TASSET, M.D.

WM. MACLEAN,
Physician to the British Legation.
MIGUEL DE LOS RIOS.
E. CHANSONNE,
Surg.-Major of the French ship of
war "La Cornelié."

When this medical certificate was received by Mr. Barton, he stated that on reflection, he feared to undertake the placing me on board the "Topaze," lest I should be taken from under his charge by the Peruvian authorities, while he might be insulted, get into some difficulty, and incur the disapprobation of his own Government. He added, that if he had a carriage of his own he would take me to the quay in Callao, and place me on board.

Mr. Barton appeared to take a very narrow view of his instructions that I was to have the protection of the British flag—that is, he did not see how that protection could extend beyond the few feet of ground over which the flag actually waved. Mr. Barton had no carriage, consequently I must remain in the Legation and die! He finally suggested I should get into the railway train just as it was about to start for Callao, the distance would be accomplished in fifteen or twenty minutes:—on my arrival I would find the cutter awaiting to convey me to the ship. Mr. Barton added an assurance that, if unfortunately I should be taken by the Peruvian authorities, he would insist on my being immediately given up to him. I also had the further assurance of the French minister that, should the anticipated difficulty occur, he would co-operate with Mr. Barton for my release, and, under no circumstances, allow me to be taken to a Peruvian prison. That plan was carried out, I stepped on board the "Topaze" that very afternoon, mentally thanking God that I was once more a free man.

To the kindness and sympathy of my warm-hearted countrymen, the captain and officers of the "Topaze"—to the change from close confinement to the invigorating sea breezes, I was indebted for some amelioration in my health.

On leaving Lima, I wrote to Mr. Barton, expressing my gratitude for the hospitality I had received at the Legation. My letter has, I find, given rise to strange misinterpretation—the expressions of gratitude it contained being construed to imply satisfaction with regard to the course pursued by

Mr. Barton. Such an interpretation is calculated to convey an erroneous impression of the whole case, and to place my last act on leaving Lima in direct opposition with the whole tenor of my conduct and assertions for many months previous to that act. Though regretting that any explanation of a mere act of courtesy should be necessary, I feel that a statement of the simple facts that elicited the letter in question, will prove the intention I had in writing it.

I had been residing for more than a twelvemonth under the protection of a flag I loved and venerated—a passive protection which if it did not ensure me the redress of my grievances, at least preserved my life. I was indebted to Mr. Barton's family for a considerate kindness and never-failing sympathy which constantly sought to ameliorate my condition and assuage my sufferings. An invalid under the circumstances in which I was placed, could not but appreciate such attentions at their full value. From Mr. Barton himself, *during the latter part of my sojourn* under the same roof, I had received kind and courteous treatment, and though I was justly indignant at the passive part he had taken when his active intervention would have proved so effectual, I could not permit official matters to interfere with the expression of my feelings of gratitude for courtesies tendered in private life. I will not attempt to give reasons for Mr. Barton's tame diplomacy; whatever these were, the result was great antagonism between us. During my compulsory residence in his family, daily intercourse softened down animosity, and, in justice to Mr. Barton, I must say I believe that towards the close of my sojourn in the Legation, he appeared animated by friendly feelings towards me. Officially we continued to differ, nor could I induce him to do that which I, in common with others, conceived to be his duty. Mr. Barton gave, as a reason for his apathy and his refusal to take the initiative in anything, that he was only acting *ad interim*, and could not assume any responsibility.

As soon as it was ascertained that I was on board the

"Topaze," the Peruvian Government wrote to Mr. Barton, requesting to be informed if I were under the protection of the British flag, and on that gentleman's replying in the affirmative, a formal demand was made that I should be delivered up to the authorities. With this demand Mr. Barton refused to comply.

My anxious wish to return home seemed as difficult to realise while on board the "Topaze" as it had been on shore, as every steamer that left the harbour was closely searched. After remaining in Callao Bay for two months, however, the ship left for Panama, and I was enabled to proceed thence to England. I reached home about the middle of November, so worn out physically and mentally that I was for some time unable to attend to my affairs. Mr. Jerningham, who was then about to return to Peru, called upon me, and informed me that he had some instructions with regard to my case. He could not exactly remember what these were, but stated that he had a memorandum relating thereto. I called at the Foreign Office to know what her Majesty's Government had determined on doing, and whether they had received any intelligence from Peru on the subject. I was told that Mr. Jerningham had received instructions to press for a decision, and I was furnished by order of Lord Russell with a memorandum containing information of what had occurred since my departure from Peru.

The following are the chief points contained in that memorandum :

"On the 11th of August, 1862, Mr. Barton reported that Captain Carvell had notified to him, that owing to the deplorable state of his health, he was about to proceed on board H.M.S. 'Topaze.'

"Mr. Barton informed Captain Carvell that *as he did not consider him a prisoner he was at liberty to act as he thought proper.*

"On the 10th of August, Captain Carvell left the British Legation, and embarked *without interruption.* His having

done so was made known to the Peruvian Government by Mr. Barton, who explained that the step was taken in consequence of Captain Carvell's health.

"The Peruvian Minister for Foreign Affairs inquired of Mr. Barton whether Captain Carvell was still under the protection of the British flag, stating, at the same time, that Captain Carvell had no right to the asylum which had been afforded to him, and which, though tolerated for political reasons, had never been conceded by the Peruvian Government.

"Mr. Barton replied by a short explanation of the circumstances under which Captain Carvell had been received at the British Legation, and by referring to the notice he had already given to the Peruvian Government of Captain Carvell's departure.

"This was followed by a formal demand addressed to Mr. Barton on the 16th of September by the Peruvian Government for the surrender of Captain Carvell, who, they stated, was not entitled to asylum in the Legation.

"Mr. Barton replied that Her Majesty's Government having approved the protection afforded, he could only refer to England the demand thus made.

"On the 3rd of October, the Peruvian Government addressed a further note to Mr. Barton, requesting him to state whether Captain Carvell had sailed from Peru on board the 'Topaze,' and whether he had definitively left the Peruvian territory.

"Mr. Barton replied in the affirmative to the first question; but stated that he could give no information whether Captain Carvell had definitively left Peru.

"On the 8th of November, 1862, Mr. Barton addressed a note to the Peruvian Government, remonstrating against the continued delay on the part of the Judge of Wills in not pronouncing as to the validity or invalidity of Mr. Winder's will, and pressing for a decision on that point.

"These are all the facts of the case reported to the Foreign

Office since August, 1862. To this it may be added that Captain Carvell's friends in this country have been informed that Earl Russell has been advised that a case had not been made out for the direct interference of Her Majesty's Government on his behalf, but that nevertheless Mr. Barton would be directed to remonstrate against the injustice of Captain Carvell being ordered to give up the property in his possession whilst Mrs. Winder was permitted to retain her share, and that Mr. Barton would also be instructed to press the Peruvian Government to decide the case.

"Mr. Jerningham's attention was directed to the case on the occasion of his return to Peru as Her Majesty's Chargé d'Affaires."

I have taken the liberty to italicise the—to say the least of it—very extraordinary statement made by Mr. Barton, in the second of the foregoing paragraphs, to the effect that he *did not consider me a prisoner*, and that *I might act as I thought proper*—a statement offering a remarkable contrast with the fears that gentleman was expressing to me at that very time that *if I stepped without the precincts of the Legation I would be taken from under his charge and thrown into a Peruvian prison*. Mr. Barton was well aware that the police had been day and night guarding the avenues to the Legation, in order to seize me the instant I should step from under the flag; and that if I contrived at last to evade this vigilance it was to escape as a fugitive, and not because I was *free to act as I thought proper*. When we take into consideration that such were the contradictory assertions and reports sent home by the acting charge, the supineness and indifference that was the result on the part of the British Government will cease to be matter of surprise.

Mr. Barton then states that I embarked *without interruption*. That I did so none better than himself knew was not attributable to any forbearance on the part of the Peruvian Government, but to its having been kept in ignorance of my movements. That no little doubt was entertained as to the

success of my attempt to get away unmolested, the discussions that took place on the subject, and the resolutions taken by Monsieur de Lesseps and himself to rescue me, if discovered and seized, sufficiently prove.

The next paragraph of itself gainsays Mr. Barton's statement of my *freedom of action*. He who has taken refuge in an asylum is fleeing from a danger, and consequently *not at liberty to go and come at will*.

The same paragraph states that the Peruvian Government acknowledges having "tolerated for *political reasons* but never *conceded*" said asylum being afforded to me. The Peruvian Government dared not attempt to take me forcibly from under the British flag—such a step would have been attended with disastrous consequences. Nor was it necessary so long as I could be kept *there*; I was sure to succumb sooner or later, and much trouble was saved. But, when I was out of their reach—when I was likely to return to England and place the affair in its true light before my own Government—*then* the Peruvian Government made the formal demand contained in the sixth paragraph.

The concluding paragraph, which alludes to "a case not having been made out for the direct interference of Her Majesty's Government on my behalf," has reference to a despatch dated September 29, 1862. The advice mentioned was given by the Crown lawyers when my case was first brought before Her Majesty's Government, with the addition that "so long as Her Majesty's Government recognised Peru as a civilised nation, they were bound to treat her as such." This was on or about November, 1861. In 1862, the matter was again submitted to the law advisers of the Crown with a similar result.

The circumstances under which the above opinion was given will explain and partly justify it. The case has never been placed in its true light before the Crown lawyers. Men learned in all the chicanery of the law so embroiled and mystified the real points at issue that they were completely lost

in the mass of "expedientes," the intricate farrago of which was intended to baffle investigation. The lengthy despatches of the Peruvian authorities, which, from beginning to end, endeavoured to shift the question from its true ground, were not only supported by the Minister in London, but confirmed perhaps by the singular lukewarmness of the British Chargé in Lima. When, in October, 1861, Mr. Barton received instructions to protect me from "ill-treatment and arrest," he was also enjoined to keep the case under strict surveillance, and report upon it from time to time. Eight months passed and no report whatever was made by Mr. Barton. Having long waited in the vain expectation that that gentleman would see fit to bring to the notice of Her Majesty's Government the constantly recurring acts of injustice done to me, I did so myself, adducing proofs so clear and unmistakable, that Lord Russell wrote to Mr. Barton, stating that charges and circumstances of such importance should not rest on Captain Carvell's unsupported statement, and desiring he would make an immediate report upon them. This did elicit a report from Mr. Barton, one as weak and insignificant as might be. On the reception of this document, Her Majesty's Government wrote requesting information on four points connected with the case, and also further information. On my part I implored Mr. Barton to give the facts as he knew them to exist—he having acknowledged to me, and stated in the presence of others, that he had never known, during his long residence in Lima, of any one being treated so infamously as I had been. But no entreaties could induce Mr. Barton to declare this officially, notwithstanding that he declared that if he were in England he would make it known to the British Government, and place before it in its true light the conduct of the Peruvian, and felt convinced of procuring my immediate release. Mr. Barton's second report was somewhat stronger, yet of so negative a character it was far from conveying to Her Majesty's Government an adequate impression of the wrongs inflicted upon me.

When such frauds were practised by a foreign power on the Home Government, when no attempt was made to deceive it by its own agents, it is not surprising that the Crown lawyers should be unable to make out a case for its intervention. The marvel is that for two years I should have been able to struggle, single-handed, against such odds.

Notwithstanding the difficulties that precluded all the circumstances of the case being brought clearly before them, Sir Hugh Cairns, Dr. Travers Twiss, and Mr. George Druce, on June 13, 1862, gave the following opinion in consultation :

OPINION.

"It is obvious that no redress can be obtained except by diplomatic interference, and we are of opinion that, assuming the facts stated to us to be accurate, a strong case exists for diplomatic remonstrance, and for the active interposition of the British Government.

"So far as regards the proceedings in the suit or suits pending in Peru, in which possession has been taken or decreed of all the property of the late Mr. Winder which has not been already made away with, whatever cause there may be for looking on such proceedings with anxiety and distrust, it may be, and probably is, beyond the province of the British Government to interfere so long as the proceedings do not appear to be contrary to the usual course of procedure in Peru, or repugnant to the principles of natural justice. But just in proportion as the Government of this country is obliged to assume the good faith of the Peruvian tribunals, so long as their proceedings are conducted with apparent order and propriety, so it must be entitled to remonstrate against and require the redress and correction of such flagrant violations of order and propriety on the part of judicial officers and persons connected with Government as are disclosed by the statements laid before us in this case.

"H. M. CAIRNS.

"TRAVERS TWISS.

"GEORGE DRUCE.

"Lincoln's Inn, June 13, 1862."

In 1861 the case was brought before the House of Commons, when Lord Palmerston, in answer to an interpellation by Captain Jervis, that instructions had been sent to her Majesty's Chargé in Lima respecting the case, but it would not be convenient to state them to the House. In August, 1862, the matter was again brought before the House, when Mr. Layard stated that I had fallen into the jaws of what

from courtesy must be called a court of justice, and mentioning my case in conjunction with Melville White's, added that: "Both these cases were most serious, and the House might rest assured that her Majesty's Government would insist on full reparation."

The instructions to Mr. Barton were that he should remonstrate against the injustice of Captain Carvell being required to give up the portion of property in his hands while his adversaries retained four-fifths of the whole estate. The attention any such mere remonstrances would be likely to meet with may be judged of by what had already taken place. How or by what means I am not prepared to say, but it is a fact that the Peruvian Government was always perfectly *au courant* of the attitude of the British Government in my affairs, governing themselves accordingly.

In the series of outrages against law and justice which I have narrated, the most important, as regards the rights of British subjects in Peru, and as such the chief question demanding the intervention of the British Government, is the decree of Judge Gamboa, of March 14, 1861. Is an Englishman to be punished for executing the instructions and decrees laid upon him by British Courts touching the property of a British subject? My offence will be found, on the strictest examination, to extend no further.

The pretence of this violation of all law was *that I might return* to Europe and take possession of and administer to property there. Whereas it was perfectly notorious to all concerned—and to no one more so than to the very judge who issued the decree, that the said property had been taken possession of and administered to by me under the authority of the English Court of Probate before my departure from England!

This decree is headed "Interdiction," and in it this judge strips me of the character and powers with which I had been invested by the English courts. I appealed against his

jurisdiction, but in vain, and was directed by my own Government to accept it. I did so, under protest, praying a decision of the case as far back as December, 1861. This Judge Gamboa, abetted in his arbitrary and illegal proceedings during nineteen months by the Peruvian Government, on October 10, 1862, turns round and *declares himself incompetent and without jurisdiction in the case!* thus confirming the opinions that had been given to that effect by seven of the most eminent lawyers in Peru, in consultation, and justifying my protest against him!

It remains to be seen if the liberty of a British subject is to be at the caprice of a Peruvian judge.

Ampuero, the Fiscal in the criminal cause against Manuel Winder, gave his "dictamen," *i. e.* opinion, rejecting the plea put forward by Winder's defender, it being evidently intended to defeat the ends of justice, directs the criminal suit to be carried forward against him, and orders the bonds redeemed to be immediately returned to the "Consulado." The consequence of this decision was that in this, as in the civil case, Ampuero was never more permitted to give another "dictamen." An honest man was considered altogether *de trop*.

Judge Carillo ordered Manuel Winder to be apprehended wherever found, and imprisoned. On November 16, 1861, the decrees of Judge Carillo were all confirmed by the Supreme Court, and the same ordered the Judge of the First Instance to prosecute the holders of the bonds, and carry forward his decrees with vigour. Judge Carillo, on December 3, 1861, again decreed Manuel's imprisonment, and that the holders of the bonds should deposit them in court. These orders were never obeyed, or held worth the paper on which they were written. But every order against me was strictly enforced.

Even in the earlier stage of these proceedings, the temerity of the Peruvian authorities in treating me as they did was a

subject of astonishment to Mr. Jerningham himself. In a letter to the Minister of Foreign Affairs, dated March 20, 1861, he requested that I should be liberated at once, adding that in the event of this not being effected, *a heavy responsibility would rest upon them.* Judge Gamboa, in a letter replying to one from the Executive, calling for explanations with regard to my arrest, assigned as one of the causes that *I might go to Europe and take bonds which were in the hands of Graham, Lowe, and Co., in Lima!*

On April 11, 1861, Mr. Jerningham, in a despatch to the Peruvian Government, stated that the Foreign Minister, Senor Melgar, had left him and myself under the impression that they would attend to the security of the property. In the same letter Mr. Jerningham protested against my arrest, charging the Peruvian Government "with VIOLATING THEIR OWN LAWS"—requested "the money received for the bonds amortised should be at once returned to the Consulado"—complained "of the repugnance manifested by the Peruvian Government to give a frank and legal protection to British subjects," &c. &c.

In a despatch dated April 12, 1861, the Peruvian Minister of Foreign Affairs states that my complaint against the incompetency of Judge Gamboa cannot be entertained—that I am a self-styled executor—that I have solicited the arrest of Manuel Winder, and that *the latter has not appealed to Government against it!* Thus Senor Melgar did not hesitate to express in an official despatch his opinion that the robber had the same right to appeal against an order to arrest him as the man he had robbed.

In a despatch dated April 24th, Senor Melgar, wishing to excuse his neglect in having permitted the amortisation of the bonds after his solemn promise to the contrary, given both to Mr. Jerningham and me, admits the neglect, but says the fault originated with some officials in the Foreign Office, but he cannot find out *where*; the same letter denies

what occurred on the evening that I went to him with Mr. Jerningham's letter about the bonds.

Of the property left by Mr. Winder it has been shown that nearly 400,000 dollars were plundered, and that all the real estate has been taken possession of by Mrs. Winder. Of the 218,000 dollars in bonds handed to me by Mr. Jerningham, the greater portion has been embargoed by the Peruvian authorities. Of the aforesaid bonds I have in my possession 125,000 dollars, which, under present circumstances, in value are no more than so much waste-paper. During the years 1861 and 1862 I was put to enormous expense by the fictitious and purely vexatious suits instituted against me, with the sole object of diverting attention from the real question at issue.

The Peruvian Government, aware that I was taking measures to have my case brought before the House of Commons, anxiously awaited the arrival of each mail, fully expecting it would bring a demand for my immediate release and reparation for the wrong done me. The statement of Mr. Layard, that "until the legal proceedings were exhausted, her Majesty's Government could not interfere," fully allayed the fears that had been entertained. In fact, it created much derisive merriment, and with good reason, as the idea of any exhaustive process being ever applied to legal proceedings there was well calculated to amuse the natives. The Peruvians have a common saying in allusion to the multitudinous documents by which a decision may be retarded, if such delay be deemed convenient by the reigning powers—they call this "hacer papel," to make paper. A suit may be carried on for ever, if properly fed with "incidentes." At the time I was placed under arrest, Senor Melgar ironically remarked that "Captian Carvell was difficult to subdue, but that the case could be prolonged for four years, at the end of which, close confinement would have proved rather tedious." When Mr. Layard's words were known in Peru, those persons

who had heard Senor Melgar's prophecy declared their conviction that the four years would now be multiplied by four.

The remarks I have felt myself called upon to make on the action taken by Mr. Barton in my affairs have been drawn from me by the absolute necessity of explaining my case, and not by any unfriendly feeling towards that gentleman. Whatever may be my opinion with regard to his conduct officially, and the singular view he chose to take of his diplomatic duties, I shall ever retain a lively impression of the kindness shown to me by his family during my residence in the Legation.

In the course of the foregoing pages I have unfortunately had occasion to make frequent allusions to the duplicity and bad faith of Peruvians. I would be loth, however, to be understood to include the whole nation in a sweeping accusation, and I feel pleasure in stating that I have found honourable exceptions, to whom the conduct of the authorities towards me was a subject of grief and indignation.

In closing the narrative of my sufferings in Peru, I would wish to express my warm thanks to the Corps Diplomatique of Lima for their prompt and energetic intervention in my behalf, which was the first decided check the Peruvian Government encountered in its iniquitous proceedings. To Monsieur de Lesseps, his Imperial Majesty's Chargé d'Affaires, especially, I would wish to express my deep gratitude. When prostrated by illness, disheartened and spirit-crushed, his friendship has cheered and encouraged me. To his private sympathy and to his official support, to his firm, dignified, and uncompromising attitude *vis-à-vis* the Peruvian Government, I am, under Providence, indebted for my escape from a Peruvian dungeon and the preservation of my life.

THE END.

